



STATE OF CALIFORNIA
Labor & Workforce Development Agency

GOVERNOR Gavin Newsom — SECRETARY Julie Su

Agricultural Labor Relations Board — California Unemployment Insurance Appeals Board
California Workforce Investment Board — Department of Industrial Relations
Employment Development Department — Employment Training Panel — Public Employment Relations Board

October 12, 2021

Re: PAGA Document
Joshua Jacopetti v. National Home Health Services, Inc
Case#: LWDA-CM-815183-20

To whom it may concern:

In regards to your letter received by the LWDA. There are no records that it was filed online as required.

Please file this and any future correspondence on any PAGA cases electronically at:
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Please redact Social Security or taxpayer identification numbers, dates of birth, names of minor children, financial account numbers, personal telephone numbers, and addresses.

Thank you,

Jason Brotarlo
Department of Industrial Relations
1515 Clay Street, Suite 2206
Oakland, CA 94612
PAGA Unit
(510) 286-1340



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Attorneys and Counselors at Law

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Anthony M. Perez, Jr.
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October 5, 2021

By US MAIL & EMAIL

pagainfo@dir.ca.gov

Labor and Workforce Development Agency
800 Capitol Mall Suite 5000 (MIC-55)
Sacramento, CA 95814

RE: Settlement Agreement *Joshua Jacopetti, Crystal Davis v. National Home Health Services, Inc.*; Case No. 20CV373252

Dear Labor and Workforce Development Agency:

Pursuant to California Labor Code Section 2699(l)(2), the attached Settlement Agreement has been submitted to the Court in connection with *Joshua Jacopetti, Crystal Davis v. National Home Health Service, Inc.*, for final approval.

Very truly yours,



Anthony M. Perez, Jr.

1 **PEREZ LAW OFFICES**
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4 455 Capitol Mall, Suite 231
5 Sacramento, CA 95814
6 Telephone: (916) 441-0500
7 Facsimile: (916) 441-0555

8 Attorneys for Plaintiffs

9 *ATTORNEYS FOR DEFENDANT LISTED ON SECOND PAGE*

10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SANTA CLARA**

12 JOSHUA JACOPETTI; CRYSTAL DAVIS, on
13 behalf of themselves and all others similarly
14 situated,

15 Plaintiffs,

16 v.

17 NATIONAL HOME HEALTH SERVICES,
18 INC.; NATIONAL HOME HEALTH
19 SERVICES-WEST, INC.; NATIONAL HOME
20 HEALTH STAFFING, INC.; NATIONAL
21 HOME HEALTH THERAPY STAFFING,
22 INC.; AVALON HOME HEALTH, INC.;
23 AVATAR HEALTH MONITORING, INC.;
24 ALEX RUDAKOV; ROMAN BRAVERMAN
25 and DOES 1 through 15, inclusive,

26 Defendants.

Case No. 20CV373252

CLASS ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT AND STIPULATION**

Judge: Patricia M. Lucas
Courtroom: Dept. 3

Original Action Filed: November 17, 2020

Preliminary Approval Motion
Hearing Date: August 25, 2021

27 **CLASS ACTION SETTLEMENT**
28 **AGREEMENT AND STIPULATION**

1 **Case No. 20CV373252**

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Diane M. O'Malley
Warren F. Hodges
Hanson Bridgett LLP
425 Market Street, 26 Floor
San Francisco, CA 94105

Attorneys for Defendants
NATIONAL HOME HEALTH SERVICES, INC.; NATIONAL HOME HEALTH SERVICES-
WEST, INC.; NATIONAL HOME HEALTH STAFFING, INC.; NATIONAL HOME HEALTH
THERAPY STAFFING, INC.; AVALON HOME HEALTH, INC.; AVATAR HEALTH
MONITORING, INC.; ALEX RUDAKOV; ROMAN BRAVERMAN.

CLASS ACTION SETTLEMENT
AGREEMENT AND STIPULATION
Case No. 20CV373252

1 This Class Action Settlement Agreement and Stipulation is made and entered into by
2 Plaintiffs JOSHUA JACOPETTI and CRYSTAL DAVIS, individually and as representatives of the
3 Class, as defined below ("Plaintiffs" or "Class Representatives"), and Defendants NATIONAL
4 HOME HEALTH SERVICES, INC.; NATIONAL HOME HEALTH SERVICES-WEST, INC.;
5 NATIONAL HOME HEALTH STAFFING, INC.; NATIONAL HOME HEALTH THERAPY
6 STAFFING, INC.; AVALON HOME HEALTH, INC.; AVATAR HEALTH MONITORING, INC.;
7 ALEX RUDAKOV and ROMAN BRAVERMAN, (collectively "Defendants" or "National"). This
8 Agreement is subject to the approval of the Court, pursuant to Code of Civil Procedure, section 382
9 et seq. and is made for the sole purpose of attempting to consummate settlement of this Action on a
10 class-wide basis subject to the following terms and conditions. As detailed below, in the event the
11 Court does not enter an order granting final approval of the Class Settlement, as defined below, or
12 the conditions precedent are not met for any reason, this Agreement is void and of no force or effect
13 whatsoever.

14 NOW THEREFORE, in consideration of the promises and warranties set forth below, and
15 intending to be legally bound and acknowledging the sufficiency of the consideration and
16 undertakings set forth below, the Plaintiffs, individually and as representatives of the Class, and
17 Defendants agree that the Action shall be, and is finally and fully compromised and settled on the
18 following terms and conditions:

19 **I. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

20 1.1. **Plaintiff's Claims.** On November 17, 2020, Plaintiffs, on behalf of themselves and all
21 others similarly situated, commenced the Action against Defendants in the Superior Court of
22 California, County of Santa Clara and alleged the following causes of action: (1) Failure to Pay
23 Piece Rate Employees for Rest and Meal Breaks, and Nonproductive Time (Cal. Labor Code
24 §226.2); (2) Failure to Pay for all Hours Worked (Cal. Lab. Code §§ 226.2, 510, 1194; IWC Wage
25 Order 4); (3) Failure to Pay Minimum Wage for all Hours Worked (Cal. Lab. Code §§ 226.2, 1194,
26 1194.2, 1194.3, 1197, 1197.1); (4) Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§
27 226, 226.2 & 226.3); (5) Failure to Keep Accurate Payroll Records (Cal. Lab. Code §§ 226.2, 1174

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CLASS ACTION SETTLEMENT
AGREEMENT AND STIPULATION
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1 & 1174.5); (6) Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194; Wage Order
2 4); (7) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512, IWC Wage Order 4); (8)
3 Failure to Provide Rest Periods (Cal. Lab. Code §§ 226.7 and IWC Wage Order 4); (9) Failure to
4 Reimburse Employee Expenses; (10) Waiting Time Penalties (Cal. Lab. Code §§ 201, 202 & 203);
5 and (11) Violations of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, et seq.). On
6 December 9, 2020, Plaintiffs provided electronic written notice to the California Labor and
7 Workforce Development Agency ("LWDA") pursuant to the Private Attorney General Act of 2004
8 (Cal. Lab. Code §§ 2698 et seq.) and, following the expiration of the statutory waiting period,
9 Plaintiffs filed the Amended Class Action Complaint in the Action on February 19, 2021, re-
10 alleging each of the causes of action in the original complaint and alleging the following additional
11 cause of action: (12) Violations of the Private Attorney General Act of 2004 ("PAGA") (Cal.
12 Labor Code §§ 2698, et seq.).

13 1.2. Defendants' Answer. Defendants answered Plaintiff's Amended Class Action
14 Complaint on March 19, 2021, denying all allegations and asserting numerous affirmative defenses.

15 1.3. Class Counsel conducted significant discovery, research and investigation in
16 furtherance of the prosecution of the Action. This discovery, investigation, research and prosecution
17 included, among other things, (a) multiple conferences with Plaintiffs' and Defendants' counsel; (b)
18 inspection and analysis of hundreds of pages of documents and other information produced by
19 Plaintiffs and Defendants informally during the litigation of the Action and in preparation for the
20 mediation; (c) analysis of the numerous legal positions taken by Defendants; (d) investigation into
21 the viability of class treatment of the claims asserted in the Action; (e) analysis of potential class-
22 wide damages, including information sufficient to understand Defendants' potential defenses
23 thereto; (f) research of the applicable law with respect to the claims asserted in the Complaint as well
24 as the potential defenses thereto; (g) research and preparation of extensive briefing regarding claims
25 asserted; (h) assembling and analyzing extensive data and information for calculating damages in
26 coordination with retained experts. Ultimately, the Parties have determined that the estimated size of
27 the Class is 631 Class Members; and (i) work with experts in preparing expert analysis and reports

1 utilizing a class sampling of 25% of Class Members over the class period.

2 The Class Representatives have at this stage vigorously prosecuted this Action, and
3 Defendants have vigorously contested it. The Parties have engaged in sufficient investigation and
4 discovery to assess the relative merits of the claims of the Class Representatives and of Defendants'
5 defenses thereto.

6 1.4. Mediation. On June 11, 2021, Defendants, Defendants' counsel, Plaintiffs and Class
7 Counsel, on behalf of the Plaintiffs and the putative class, participated in a mediation before
8 Honorable Judge Ronald Sabraw (Ret.), a highly respected former judge and neutral mediator with
9 an office in Walnut Creek, California, who specializes in wage and hour mediations, in an attempt to
10 resolve all disputes related to the Action. With mediator Sabraw's assistance, the Parties agreed,
11 subject to approval by the Court, to the Settlement of the Action. The Parties further agreed to enter
12 into this Agreement to memorialize their settlement of the Action.

13 1.5. Allegations of the Class Representatives and Benefits of Class Settlement. The
14 discovery conducted in this matter, as well as discussions between counsel, have been adequate to
15 give the Class Representatives and Class Counsel a sound understanding of the merits of their
16 positions and to evaluate the worth of the claims of the Class. The discovery conducted in the Action
17 and the information exchanged by the Parties through discovery and settlement discussions are
18 sufficient to reliably assess the merits of the Parties' respective positions and to compromise the
19 issues on a fair and equitable basis.

20 Plaintiffs and Class Counsel believe that the claims, causes of action, allegations and
21 contentions asserted in the Action have merit. However, Plaintiffs and Class Counsel recognize and
22 acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the
23 Action against Defendants through trial and through appeals. Class Counsel has taken into account
24 the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as
25 this, the financial condition of the Defendants, as well as the difficulties and delays inherent in such
26 litigation, the potential difficulty of obtaining certification of the Action, as well as trying the claims
27 of the class. Class Counsel is mindful of the potential problems of proof under, and possible defenses

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AGREEMENT AND STIPULATION

1 to, the claims alleged in the Action. Class Counsel has also taken into account Defendants' potential
2 defenses to Plaintiff's claims.

3 The Action and Settlement set forth herein have and will continue to result in substantial
4 benefit to all Class Members. First and foremost, and irrespective of the Settlement or any
5 individual Class Members' decision to be bound thereby, the Action and efforts of Class Counsel
6 were, in part, a catalyst for Defendants to amend their compensation system following the filing of
7 the Complaint to ensure strict compliance with the Labor Code. Further, the \$2,975,000.00 Gross
8 Settlement Fund is fair, reasonable and adequate in light of all known facts, circumstances and
9 information obtained during discovery.

10 Class Counsel believes that the Settlement set forth in this Stipulation confers substantial
11 benefits upon Plaintiffs and the Class Members and that an independent review of this Agreement by
12 the Court in the approval process will confirm this conclusion. Based on their own independent
13 investigation and evaluation, Class Counsel has determined that the Settlement set forth in the
14 Agreement is in the best interests of the Class Members.

15 1.6. Defendants' Denials of Wrongdoing and Liability. Defendants have denied and
16 continue to deny each and all of the allegations, claims, and contentions alleged by Plaintiffs in the
17 Action. Defendants have expressly denied and continue to deny all charges of wrongdoing or
18 liability against them arising out of any of the conduct, statements, acts or omissions alleged in the
19 Action. Defendants contend that they complied in good faith with California and federal wage and
20 hour laws and have dealt legally and fairly with Plaintiffs and Class Members. Defendants further
21 deny that, for any purpose other than settling the Action, these claims are appropriate for class or
22 representative treatment. Nonetheless, Defendants have concluded that further proceedings in the
23 Action would be protracted and expensive and that it is desirable that the Action be fully and finally
24 settled in the manner and upon the terms and conditions set forth in this Agreement in order to
25 dispose of burdensome and protracted litigation, to permit the operation of Defendants' business
26 without further expensive litigation and the distraction and diversion of its personnel with respect to
27 matters at issue in the Action. Defendants have also taken into account the uncertainty and risks

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1 inherent in any litigation, especially in complex cases such as the Action. Defendants have,
2 therefore, determined that it is desirable and beneficial to them that the Actions be settled in the
3 manner and upon the terms and conditions set forth in this Stipulation.

4 1.7. Intent of the Class Settlement. The Class Settlement set forth herein intends to
5 achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of
6 the Action; (3) discharge of Released Parties from liability for any and all of the Released claims;
7 and (4) discharge of Defendants from liability for any and all claims arising out of the Action.

8 II. DEFINITIONS

9 As used in this Agreement, the following terms shall have the meanings specified below. To
10 the extent terms or phrases used in this Agreement are not specifically defined below, but are
11 defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

12 2.1 "Action" refers to the civil action titled *Joshua Jacopetti; Crystal Davis v. National*
13 *Home Health Services, Inc., et al.*, commenced on November 17, 2020, in the Superior Court of
14 California, County of Santa Clara, Case No.: 20CV373252.

15 2.2. "Administrative Expenses" include all costs and expenses associated with and paid
16 to the Settlement Administrator, which are anticipated not to exceed \$20,000.

17 2.3. "Agreement" means this Class Action Settlement Agreement and Stipulation,
18 including any attached exhibits.

19 2.4. "Notice Period" means the thirty (30) calendar day period which begins on the
20 Mailing Date. An Opt-Out Request must be returned to the Settlement Administrator with a
21 postmark date during the Notice Period to be valid and effective. An objection must be filed with the
22 Court during the Notice Period to be considered.

23 2.5. "Class" means the class to be conditionally certified for settlement purposes only as
24 "all Clinicians and Piece Rate Employees who were employed by either Defendants or one of
25 its/their direct or indirect subsidiaries in California at any time from November 17, 2016, through
26 April 22, 2021". The term "Clinicians" includes per diem, part-time and full-time home health
27 aides, occupational therapists, occupational therapist assistants, physical therapists, physical therapy

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1 assistants, registered nurses, licensed practical nurses, licensed vocational nurses, medical social
2 workers, nursing assistants, speech/language pathologists, speech/language therapists, and other
3 clinicians paid on an hourly or per visit basis.

4 2.6. "Class Counsel" refers to Anthony M. Perez, Jr. of Perez Law Offices.

5 2.7. "Class Counsel's Fees and Expenses" means the amount awarded to Class Counsel
6 by the Court to compensate them for their fees in prosecuting the Action, not to exceed \$991,666.00,
7 plus reasonable costs actually incurred, not to exceed \$20,000, as determined by the Court.

8 2.8. "Class Member" means any person who is a member of the Class, or, if such person
9 is incompetent or deceased, or unavailable due to military service, the person's legal guardian,
10 executor, heir or successor-in-interest.

11 2.9. "Class Notice" means the Notice of Proposed Class Action Settlement and Hearing
12 Date for Court Approval, as set forth in the form of Exhibit 1 attached hereto, or as otherwise
13 approved by the Court, which is to be mailed to Class Members.

14 2.10. "Class Representative" means Plaintiffs Joshua Jacopetti and Crystal Davis.

15 2.11. "Class Settlement" means the settlement embodied in this Agreement, which is
16 subject to Court approval.

17 2.12. "Complaint" means the operative First Amended Class Action Complaint filed in
18 the Action by Joshua Jacopetti and Crystal Davis, in the Superior Court of California, County of
19 Santa Clara on February 17, 2021.

20 2.13. "Court" means the Superior Court of California, County of Santa Clara.

21 2.14. "Work Weeks Worked" means the number of Work Weeks Worked by a Class
22 Member during the Class Period, as regularly recorded on Defendants' timekeeping systems then in
23 effect.

24 2.15. "Defendants" means National Home Health Services, Inc.; National Home Health
25 Services-West, Inc.; National Home Health Staffing, Inc.; National Home Health Therapy Staffing,
26 Inc.; Avalon Home Health, Inc.; Avatar Health Monitoring, Inc.; Alex Rudakov; Roman Braverman

1 and all of their affiliated entities, and all of their shareholders, owners, officers, directors, agents,
2 managing agents, employees, insurers, and attorneys.

3 2.16. "Defense Counsel" means Diane O'Malley and Warren Hodges of Hanson Bridgett
4 LLP.

5 2.17. "Effective Date" of this Agreement means the date when all of the conditions set
6 forth in Paragraph 7.6 have occurred.

7 2.18. "Employee's Taxes and Required Withholding" means the employee's share of any
8 and all applicable federal, state or local payroll taxes, including those collected under authority of
9 the Federal Insurance Contributions Act ("FICA"), FUTA and/or SUTA on the portion of any
10 Plaintiff Class Member's Individual Settlement Payment that constitutes wages. The Employee's
11 Taxes and Requirement Withholdings will be withheld from and paid out of the Net Settlement
12 Fund.

13 2.19. "Employers' Taxes" means and refers to Defendants' share of corporate federal,
14 state and/or local payroll taxes that is owed on the portion of any Plaintiff Class Member's
15 Individual Settlement Payment that constitutes wages. The Employers' Taxes shall be paid from the
16 Gross Settlement Fund.

17 2.20. "Final Approval Hearing" shall mean the final hearing held to ascertain the fairness,
18 reasonableness, and adequacy of the Class Settlement.

19 2.21. "Gross Settlement Fund" is the agreed upon non-reversionary settlement amount
20 totaling \$2,975,000.00 to be paid by Defendants in full settlement of the Released Claims asserted in
21 the Action, including the administrative costs and expenses, Class Counsel's Fees and Expenses, any
22 Court approved Incentive Award, payments for PAGA Penalties to be allocated and paid to the State
23 of California, Employers' Taxes and all other costs associated with the Settlement.

24 2.22. "Incentive Award" means any additional monetary payment provided to Joshua
25 Jacopetti and Crystal Davis in their capacity as Class Representatives, not to exceed \$10,000 each,
26 for their efforts and risks on behalf of the Class in the Action, as determined by the Court.

1 2.23. "Individual Settlement Payment" means the amount which is ultimately distributed
2 to each Plaintiff Class Member, net of any Employee's Taxes and Required Withholdings.

3 2.24. "Mailing Date" means the date that the Settlement Administrator initially mails by
4 Regular United States Mail the Class Notice to Class Members.

5 2.25. "Net Settlement Fund" means the portion of the Gross Settlement Fund available for
6 distribution to Plaintiff Class Members after deduction of Class Counsel's Fees and Expenses, the
7 Incentive Award, the cost of the Settlement administration, all Employers' Taxes which must be
8 remitted on Individual Settlement Payments, and the payment to the LWDA.

9 2.26. "Opt-Out Request" means a written request from a Class Member requesting
10 exclusion from the Class in accordance with the terms of the Class Notice.

11 2.27. "Parties" shall mean Plaintiffs, individually and on behalf of all Class Members, and
12 Defendants.

13 2.28. "Plaintiffs" means the named Plaintiffs in the Action, Joshua Jacopetti and Crystal
14 Davis.

15 2.29. "Plaintiff Class Member" means each Class Member who has not timely opted out
16 of this Settlement pursuant to Paragraph 6.3 of this Agreement.

17 2.30. "Preliminary Approval Order" means an order from the Court preliminarily
18 approving this Agreement and Settlement. A copy of a proposed Order Preliminarily Approving the
19 Class Settlement, Directing the Issuance of Notice to the Class, and Scheduling a Final Approval
20 Hearing is attached hereto as Exhibit 2.

21 2.31. "Released Claims" or "Settled Claims" mean all disputes, claims, and/or causes of
22 action pleaded or which could have been pleaded in and arising from the facts, claims and/or
23 allegations in the Complaint and corresponding letter to the LWDA, and all penalties arising from
24 the claims in the Action under Cal. Labor Codes §§ 201-203, 226, 226.2, 226.3, 226.7, 218.5, 510,
25 512, 558, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197, 1197.1, 2698-2699 (based on claims in the
26 Actions), IWC Wage Order No. 4, Cal. Civil Proc. § 1021.5, §§ 17200 *et seq.* of the California
27 Business and Professions Code, damages, penalties and interest and other amounts recoverable under

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1 the causes of action under California law and/or Federal law, and interest, liquidated damages,
2 attorney's fees and costs based on claims in the Action. The Released Claims include claims of any
3 and every nature based on off-the-clock work, minimum wage, overtime, meal and rest break claims,
4 payroll records maintenance, wage statement claims, waiting time penalties, Wage Order claims,
5 Unfair Competition Law claims, and California Labor Code 2802 reimbursements.

6 Other than as provided in Paragraph 4.4, it is understood and agreed that this Agreement will
7 not release any person, party or entity from claims, if any, by Class Members for workers
8 compensation, unemployment, or disability benefits of any nature, nor does it release any claims,
9 actions, or causes of action which may be possessed by Class Members under state or federal
10 discrimination statutes, including, without limitation, the Cal. Fair Employment and Housing Act,
11 the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act, the Cal. Civil Code § 51, *et*
12 *seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*;
13 the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee
14 Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; and all of their
15 implementing regulations and interpretive guidelines.

16 2.32. "Released Parties" means Defendants and all of its/their current and former parent,
17 subsidiary, affiliated and related companies and entities, and all of their owners, officers, directors,
18 employees, insurers, attorneys and agents.

19 2.33. "Settlement" means the settlement of the Action effectuated by this Agreement
20 between the Parties.

21 2.34. "Settlement Administrator" shall mean experienced, neutral third-party
22 administrator, *Simpluris*, which the Parties have agreed will be responsible for administration of the
23 Settlement and related matters.

24 2.35. "Settlement Percentage" means, for each Plaintiff Class Member, the fraction
25 obtained by dividing each Plaintiff Class Member's number of Work Weeks Worked by the total
26 Work Weeks Worked of all Plaintiff Class Members, with that fraction multiplied by the Net
27 Settlement Fund.

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1 2.36. "Settlement Period" means the period beginning on November 17, 2016, through
2 and including the Preliminary Approval Date.

3 2.37. "Settlement Proceeds Distribution Deadline" means a date that is fifteen (15) days
4 after the Effective Date.

5 **III. CLASS SETTLEMENT PAYMENT PROVISIONS**

6 3.1. Allocation of Gross Settlement Fund. Subject to final Court approval and the
7 conditions specified in this Agreement, and in consideration of the mutual covenants and promises
8 set forth herein, Defendants agree to make a total settlement payment under this Agreement in the
9 amount of \$2,975,000.00, *i.e.*, Gross Settlement Fund. The Gross Settlement Fund includes, but is
10 not limited to, payments to be made for (1) Class Counsel's Fees and Expenses; (2) the Plaintiffs'
11 Incentive Payment; (3) costs of administering the Settlement; (4) payment of PAGA to the LWDA;
12 and (5) all employee-side payroll tax costs which must be remitted on Individual Settlement
13 Payments. The Gross Settlement Fund will be paid in two equal installments. The first one-half of
14 the \$2,975,000.00 shall be paid upon the court's final approval of the Class/PAGA settlement. The
15 second half of the settlement sum shall be due and payable 6 months after the court's final approval
16 of the Class/PAGA settlement. The Parties agree, subject to Court approval, that the Gross
17 Settlement Fund shall be apportioned as follows:

18 a. At the Final Approval Hearing, Class Counsel will apply to the Court for an
19 award of attorneys' fees incurred by Class Counsel in an amount not to exceed \$991,666.00, which
20 equals 33 1/3% percent of the Gross Settlement Fund. At the Final Approval Hearing, Class Counsel
21 will also apply to the Court for recovery of actual costs incurred by Plaintiff's counsel in the Action
22 in an amount not to exceed \$20,000. Defendants will not oppose such applications. Approval of the
23 Settlement shall not be contingent upon approval of the attorneys' fee award or the costs award.

24 These fees and costs are included in, and shall come from, the Gross Settlement Fund. The
25 Class Counsel's Fees and Expenses approved by the Court shall encompass: (a) all work performed
26 and costs and expenses incurred by, or at the direction of, any attorney purporting to represent the
27 Class through the date of this Agreement; (b) all work to be performed and costs to be incurred in

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1 connection with approval by the Court of the Class Settlement; (c) all work to be performed and
2 costs and expenses, if any, incurred in connection with administering the Class Settlement through
3 dismissal of the Action, with prejudice; and (d) may be based inter alia on the Common Fund
4 Doctrine and/or the Catalyst Theory.

5 Class Counsel must provide Defendants with IRS Forms W-9, so that Defendants may issue
6 IRS Forms 1099 misc. To the extent attorneys' fees are not approved in the full amount of as set
7 forth herein, then the amount not approved will remain a part of the Net Settlement Fund for
8 distribution to Plaintiff Class Members on a pro rata basis. Similarly, to the extent costs sought by
9 Class Counsel are not approved in their entirety, any sum not approved will remain a part of the Net
10 Settlement Fund for distribution to Plaintiff Class Members on a pro rata basis. Except as provided
11 in this Paragraph, upon final approval, each Party shall bear her or its own attorneys' fees, costs, and
12 expenses incurred in the prosecution, defense, and settlement of the Action.

13 b. At the Final Approval Hearing, Class Counsel will apply to the Court for an
14 Incentive Award in an amount not to exceed \$10,000 to be paid to each Class Representative for
15 their services and for assuming the risks associated with this litigation. Defendants will not oppose
16 such application. Approval of the Settlement shall not be contingent upon approval of the Incentive
17 Award.

18 Any Incentive Award is included in, and shall come from, the Gross Settlement Fund. If the
19 Court approves and awards an Incentive Award in an amount less than the total of \$20,000, as set
20 forth above, the amount not approved will remain a part of the Net Settlement Fund for distribution
21 to Plaintiff Class Members on a pro rata basis. The Incentive Award payable to the Plaintiffs shall be
22 in addition to any payment they may receive pursuant to Paragraph 3.1(e), below.

23 c. An amount of \$40,000.00 from the Gross Settlement Fund is allocated to
24 settle claims brought pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California
25 Labor Code §§ 2698, *et seq.*, as approved by the Court, which shall be distributed by the Settlement
26 Administrator to the California Labor and Workforce Development Agency ("LWDA") and
27 Participating Class Members as set forth herein (the "PAGA Payment"). Of this amount, \$30,000,

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1 representing seventy-five percent (75%), shall be distributed to the LWDA. The remaining twenty-
2 five percent (25%) shall be allocated to the Class and paid pro rata to Participating Class Members
3 on a Qualifying Pay Period basis, based on the same allocation method as set forth in this
4 Agreement. Because the PAGA Payment is in the nature of a penalty pursuant to Labor Code §
5 2699(i), these payments shall not be subject to withholding. In the event the Court rejects this
6 allocation, the Parties will meet and confer to reach a penalty allocation acceptable to all parties that
7 does not materially alter the terms of Settlement, nor require Defendants to pay more than the Gross
8 Settlement Fund. Upon preliminary approval by the Court, the Settlement Administrator shall send a
9 copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA. The LWDA share
10 of the PAGA payment shall be paid by the Settlement Administrator out of the Gross Settlement
11 Fund within 5 days of the Final Payment Date.

12 d. Subject to Court approval, an amount of \$20,000 will be set aside from the
13 Gross Settlement Fund to cover any of the Settlement Administrator's costs of administering the
14 Settlement through and beyond final approval. If any portion of this amount remains after 60 days
15 following the Effective Date, such remaining amount shall be donated to CASA of Santa Clara
16 County.

17 e. After deducting the amounts specified in Paragraphs 3.1(a)-(d), above, each
18 Plaintiff Class Member shall be entitled to a pro rata portion of the remaining amount, which is
19 known as the Net Settlement Fund. Individual Settlement Payments shall be awarded to Plaintiff
20 Class Members from the Net Settlement Fund based on the number of Work Weeks Worked by each
21 Class Member, as a fraction of the total Work Weeks Worked of all Plaintiff Class Members.

22 The Parties acknowledge and agree that the formula used to calculate Individual Settlement
23 Payments does not imply that all of the elements of damages alleged in the Action are not being
24 taken into account. The above formula was devised as a practical and logistical tool to simplify the
25 claims process.

1 The Parties agree that the entire amount of the Net Settlement Fund, less applicable payroll
2 taxes, shall be distributed to Plaintiff Class Members. Any Class Member who is not a Plaintiff Class
3 Member shall not receive an Individual Settlement Payment.

4 3.2. Taxation of Settlement Proceeds. All Individual Settlement Payments paid to
5 Plaintiff Class Members, including Plaintiffs, shall be paid in a net amount after applicable state and
6 federal withholdings, including payroll taxes, have been deducted.

7 a. The Parties agree that thirty-three and one-third percent (33 1/3 %) of the
8 amount distributed to each Plaintiff Class Member will be considered wages and will be reported as
9 such to each Plaintiff Class Member on an IRS Form W-2. The Parties agree that thirty-three and
10 one-third percent (33 1/3 %) of the amount distributed to each Plaintiff Class Member will be
11 considered civil penalties and interest which will be reported as such to each Plaintiff Class Member
12 on an IRS Form 1099 misc., if applicable. The Parties agree that thirty-three and one-third percent
13 (33 1/3 %) of the amount distributed to each Plaintiff Class Member will be considered California
14 Labor Code 2802 reimbursements, not subject to withholding and reported on Form 1099. The
15 foregoing tax allocation shall not apply to sums paid to Plaintiffs described in Paragraph 3.1(b).

16 b. The Settlement Administrator shall calculate, withhold from each Individual
17 Settlement Payment, and remit to applicable governmental agencies sufficient amounts as may be
18 owed by Plaintiff Class Members for applicable employee taxes. The Settlement Administrator will
19 issue appropriate tax forms to each Plaintiff Class Member consistent with the foregoing breakdown.

20 c. The Parties agree that the Gross Settlement Fund will qualify as a settlement
21 fund pursuant to the requirements of section 468(B)(g) of the Internal Revenue Code of 1986, as
22 amended, and section 1.468B-1. *et seq.* of the income tax regulations. Furthermore, the Settlement
23 Administrator is hereby designated as the "Administrator" of the qualified settlement funds for
24 purposes of section 1.46B-2(k) of the income tax regulations. As such, all taxes imposed on the
25 gross income of the Gross Settlement Fund and any tax-related expenses arising from any income
26 tax return or other reporting document that may be required by the Internal Revenue Service, or any
27 state or local taxing body will be paid from the Gross Settlement Fund.

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1 d. All Parties represent that they have not received, and shall not rely on,
2 advice or representations from the other Party or her/his agents regarding the tax treatment of
3 payments under federal, state, or local law.

4 3.3. No Credit Toward Benefit Plans. Except as otherwise required by applicable plan
5 documents, the Individual Settlement Payments made to Plaintiff Class Members and Incentive
6 Awards under this Agreement shall not be utilized to determine eligibility for, or calculation of any
7 additional benefits under any benefit plans to which any Plaintiff Class Members may be eligible
8 including, but not limited to: retirement plans, profit-sharing plans, bonus plans, 401(k) plans, stock
9 purchase plans, vacation plans, sick leave plans, PTO plans, pension plans, or any other benefit plan.
10 It is the Parties' intention that this Agreement will not affect any rights, contributions, or amounts to
11 which Plaintiff Class Members may be entitled under any benefit plans. The Parties agree that any
12 Individual Settlement Awards or Enhancement Award paid under the terms of this Settlement do not
13 represent any modification of Participating Class Members' previously credited hours of service or
14 other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan
15 sponsored by Defendants. Further, any Individual Settlement Award or the Enhancement Award
16 paid hereunder shall not be considered "compensation" in any year for purposes of determining
17 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare benefit
18 plan, employee bonuses, or employee past, current or future compensation levels. The Parties
19 further agree that Plaintiffs and all Participating Class Members will be deemed to have waived any
20 claims or benefits under the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001,
21 et seq.) premised upon any and all amounts they receive under this Settlement as part of their
22 Released claims under this Settlement.

23 3.4. Non-Monetary Relief. In addition to the Gross Settlement Fund, Defendants agree
24 that the Action and effort of Class Counsel were, in part, a catalyst for Defendants to amend their
25 compensation system after the Action was filed in an effort to bring their pay system into
26 compliance with the Labor Code.

27 **IV. RELEASE PROVISIONS**

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4.1. Non-Admission of Liability. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that they have violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract, violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to the Plaintiffs or any Class Member. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

4.2. Dismissal of Claims. Subject to final Court approval and the conditions specified in this Agreement, and in consideration of the mutual covenants and promises set forth herein, the Plaintiffs and all Plaintiff Class Members shall dismiss with prejudice all Released Claims, to the greatest extent permitted by law at the time of the second funding installment and distribution as so stated in a designated under penalty of perjury by the designated Claims Administrator.

4.3. Release of All Settled Claims. As of the Effective Date, the Plaintiffs, and all Plaintiff Class Members (i.e., all Class Members who do not properly opt-out) (on behalf of each of them and each of their heirs, executors, administrators, and assigns) irrevocably and unconditionally fully release and forever discharge Defendants and all of their respective former, present, and future owners, parents, subsidiaries, affiliates, divisions, related entities, joint venturers, partners, corporations in common control, co-employers, service providers, predecessors, successors, and assigns, and past, present, and future officers, directors, employees, partners, shareholders, agents, associates, representatives, attorneys, insurers, and any other successors, assigns, or legal

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1 representatives of any of them (collectively the "Released Parties"), from claims alleged in the
2 Action and any and all other claims, causes of action, demands, injuries, grievances, obligations,
3 losses, damages penalties, interest, fines, debts, liens, liabilities, attorneys' fees, costs, and any other
4 form of relief or remedy in law or equity, of any type whatsoever, that occurred on or before the
5 Effective Date of the Settlement that could reasonably have been brought based on the or related to
6 or arising out of facts alleged or any theory that could have been brought based on those facts in the
7 Action and defined herein as Settled Claims. This release is to be construed broadly to the extent
8 permitted by law.

9 a. The Parties agree for settlement purposes only that because the Plaintiff
10 Class Members are so numerous, it is impossible or impracticable to have each Plaintiff Class
11 Member execute this Agreement. Accordingly, the Class Notice will advise all Class Members of the
12 binding nature of the release of claims and such notice shall have the same force and effect as if the
13 Agreement were executed by each Plaintiff Class Member.

14 b. The Plaintiffs and Class Counsel represent, covenant, and warrant that they
15 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
16 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
17 or rights herein released and discharged, except as set forth herein.

18 4.4. General Release by Plaintiffs. As to Plaintiffs, the release set forth in Paragraph
19 4.3 above is intended to settle any and all of the Settled Claims, whether known or unknown, that
20 Plaintiffs may have against the Released Parties for any acts or omissions occurring on or before the
21 issuance of a Preliminary Approval Order, except for Plaintiff's pro rata share of the settlement
22 proceeds. Therefore, as to the Settled Claims, Plaintiff waives any and all rights conferred under
23 section 1542 of the California Civil Code, which provides as follows:

24 "A general release does not extend to claims which the creditor does not know or suspect
25 to exist in his or her favor at the time of executing the release, which if known by him or
26 her must have materially affected his or her settlement with the debtor."
27
28

1 Notwithstanding the provisions of Civil Code section 1542, and to implement a full and
2 complete release and discharge, Plaintiffs Davis expressly acknowledges this Settlement is intended
3 to include in its effect, without limitation, all known and unknown claims, including any claims that
4 she does not know or suspect to exist in her favor against the Released Parties at the time of signing
5 this Settlement, and that this Settlement contemplates the extinguishment of any such claim or
6 claims. Plaintiffs acknowledges she may later discover facts different from or in addition to those he
7 now knows or believes to be true regarding the matters released or described in this Settlement, and
8 nonetheless agrees that the releases and agreements contained in this Settlement shall remain fully
9 effective in all respects notwithstanding any later discovery of any different or additional facts.
10 Plaintiffs assumes any and all risks of any mistake in connection with the true facts involved in the
11 matters, disputes, or controversies described in this Settlement or with regard to any facts now
12 unknown to Plaintiffs relating to those matters. All such Claims are forever barred and without
13 regard to whether these Claims are based on alleged tort, wage payment, contract, discrimination,
14 retaliation, harassment, or other allegedly unlawful act; or any Claim or cause of action regardless of
15 the forum in which it may be brought, including without limitation Claims under Title VII, the
16 National Vietnam Era Veterans' Readjustment Assistance Act of 1974, claims under the Employee
17 Retirement Income Security Act of 1974, the Age Discrimination in Employment Act, the Age
18 Claims Assistance Act of 1988, the California Fair Employment and Housing Act, the Americans
19 With Disabilities Act, the Older Worker Benefit Protection Act, or any other statutes.

20 4.5. Release of Claims by Class Counsel Upon receipt of Class Counsel's Fees and
21 Expenses, as ordered by the Court on final approval of the Settlement, Class Counsel shall fully and
22 finally release Defendants and the Released Parties from any and all claims for attorneys' fees and
23 expenses arising from the Action and any claims released by the Plaintiffs and Plaintiff Class
24 Members, whether known and unknown, whether under federal, state and/or local law, statute,
25 ordinance, regulation, common law, or other source of law. Class Counsel's Released Claims
26 include, but are not limited to, claims for attorneys' fees and expenses arising from or dependent on
27 the California Civil Code, the California Labor Code; the wage orders of the California Industrial

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1 Welfare Commission; California Business and Professions Code sections 17200, et seq.; California
2 Labor Code sections 2698, et seq.; the California common law of contract and tort, and the Fair
3 Labor Standards Act.

4 4.6. Labor Code Sections Do Not Apply to Releases. The Parties agree that California
5 Labor Code §§ 206.5 and 2804 do not invalidate any provision of this Agreement, because among
6 other things, the claims and Released Claims are disputed and contested, and the Settlement was
7 bargained for at arms' length and approved by the Court.

8 **V. CONDITIONAL CLASS CERTIFICATION AND CLASS COUNSEL**

9 5.1. Conditional Class Certification. For settlement purposes only, the Parties agree to
10 the conditional certification of the Class. In support of this Agreement, Plaintiffs will request that the
11 Court certify for settlement purposes the Class as to all claims that have been asserted or which are
12 additionally sought to be asserted in the Action as part of this Agreement.

13 a. The Parties intend their Settlement to be contingent upon the preliminary
14 and final approval of each and every term of this Agreement, without material or substantive
15 modification, unless the Parties agree to such modification. If the Court does not so approve this
16 Agreement, the Parties intend this Agreement to become null and void, and unenforceable, in which
17 event the settlement terms set forth herein, including any modifications made with the consent of the
18 Parties, and any action taken or to be taken in connection with this Agreement shall be terminated
19 and shall become null and void and have no further force or effect, and the Class certified pursuant
20 to this Agreement will be decertified for all purposes.

21 b. In the event that the Court does not grant preliminary or final approval of the
22 Settlement, or in the event that this Agreement shall terminate or the Settlement embodied herein
23 does not become effective for any reason, the Agreement and all negotiations, court orders and
24 proceedings relating thereto shall be without prejudice to the rights of the Plaintiffs, Class Members
25 and Defendants, each of whom shall be restored to her/his/its respective positions existing prior to
26 the execution of this Agreement, and evidence relating to the Agreement and all negotiations shall
27 not be discoverable or admissible in the Action or any other litigation. Defendants do not waive, and

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1 instead expressly reserves, its rights to challenge the propriety of class certification for any purpose
2 should the Court not grant preliminary or final approval of the Parties' Settlement.

3 c. If the Court grants preliminary approval but does not grant final approval of
4 the Settlement, then the Preliminary Approval Order shall be vacated in its entirety. In addition, this
5 Agreement, the Preliminary Approval Order, and any other document in any way relating to the
6 Agreement or Settlement may not be relied upon, referred to or used in any way for any purpose in
7 connection with any further proceedings in this or any related action, including class certification
8 proceedings. Defendants do not waive, and instead expressly reserve, their rights to challenge the
9 propriety of class certification for any purpose should the Court not grant final approval of the
10 Settlement.

11 5.2. Appointment of Class Counsel. For purposes of this Agreement and subject to the
12 Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the
13 Class and the effectuation of the Class Settlement pursuant to this Agreement.

14 **VI. NOTICE AND CLAIMS ADMINISTRATION PROCESS**

15 6.1. Identification of Class Members. Within fifteen (15) business days after entry of
16 the Preliminary Approval Order, Defendants shall provide to the Settlement Administrator a list of
17 Class Members that includes: (1) the names, last known addresses, last known email addresses,
18 telephone numbers, and social security numbers of each Class Member; and (2) the total number of
19 Work Weeks Worked by each Class Member during the Settlement Period. Defendants agree to use
20 its best efforts to provide the list in an electronic format reasonably acceptable to the Settlement
21 Administrator. The Settlement Administrator will keep the list confidential, use it only for the
22 purposes described herein, and return it to Defendants upon completion of the settlement
23 administration process. The Class List will be treated as confidential by the Settlement Administrator
24 and will not be disclosed by the Settlement Administrator to anyone, except as may be required to
25 applicable tax authorities, pursuant to the express written consent of Defendants, by order of the
26 Court, or as may be necessary to carry out the reasonable steps described in this Settlement to locate
27

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1 missing Class Members. In no event will the Settlement Administrator provide the Class List to
2 Class Counsel unless specifically authorized by Defense Counsel.

3 6.2. Individual Settlement Payment Calculation. Based on the information in the Class
4 Member list and the formula set forth in Paragraph 3.1(e) above, the Settlement Administrator shall
5 promptly calculate an estimated Individual Settlement Payment for every Class Member, to be
6 included in the individualized Notice to be sent to that Class Member and shall prepare and mail a
7 spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than two
8 (2) days before mailing the Class Notice to Class Members.

9 6.3. Notice Procedure. Within ten (10) business days after receipt of the list of Class
10 Members described in Paragraph 6.1 above, the Settlement Administrator shall mail the Class Notice
11 to each Class Member whose address information is known. The mailing shall be sent by first-class
12 U.S. Mail, postage pre-paid. The date that the Settlement Administrator mails the Class Notice is the
13 Mailing Date. It shall be conclusively presumed that each and every Class Member whose Class
14 Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar
15 days after the Mailing Date has received the Class Notice.

16 Not later than ten (10) business days after receipt of the list of Class Members described in
17 Paragraph 6.1 above, the Settlement Administrator shall also email a copy of the Class Notice to all
18 Class Members whose email addresses are known. The Settlement Administrator will track and
19 report all "bounce back" emails but shall be under no obligation to search for different email
20 addresses.

21 a. The Settlement Administrator shall promptly re-mail any Class Notice
22 returned by the Post Office with a forwarding address. It shall be conclusively presumed that those
23 Class Members whose re-mailed Class Notice is not returned to the Settlement Administrator as
24 undeliverable within fifteen (15) calendar days after re-mailing has received the Class Notice.

25 b. The Settlement Administrator shall conduct one additional address
26 search/check for any Class Notice returned by the Post Office as "undeliverable." If an updated
27

1 address is found, the Settlement Administrator shall promptly re-mail the Class Notice to that
2 address one time.

3 c. The Settlement Administrator will use appropriate skip tracing and National
4 Change of Address ("NCOA") searches to increase the likelihood of delivery of the Class Notice,
5 including one address confirmation/update of all Class Members prior to the initial mailing. The
6 Settlement Administrator shall not perform more than one re-mailing to any Class Member.

7 d. Class Counsel shall provide to the Court, at or before the Final Approval
8 Hearing, a declaration from the Settlement Administrator confirming that the Class Notice was
9 mailed to all Class Members as required by this Agreement, as well as any additional information
10 Class Counsel deems appropriate to provide to the Court.

11 e. The Class Notice shall state the formula used in calculating Individual
12 Settlement Payments as calculated by the Settlement Administrator. A Plaintiff Class Member
13 challenging his or her settlement payment, that has not opted out of the class settlement, may
14 produce documentary evidence to the settlement administrator for consideration and/or challenge.
15 The Settlement Administrator will resolve the challenge and make a final and binding determination
16 without hearing or right of appeal. The personnel records, including payroll records, of Defendant(s)
17 shall be considered by the Settlement Administrator as the presumptive best evidence of the number
18 of Work Weeks Worked.

19 f. The Class Notice shall explain that no claim form will be required from any
20 individual on the Class Member list to whom a Class Notice is sent. The Class Notice shall further
21 explain that a Class Member who receives an email version of the Class Notice but does *not* receive
22 a hard copy of the Class Notice through the U.S. Mail shall *not* be eligible to share in the settlement
23 funds *unless* that individual submits a written request signed by the individual, including the Class
24 Member's name and a valid mailing address, to the Settlement Administrator no later than the close
25 of the Notice Period requesting a hard copy of the individualized Class Notice be mailed to the
26 individual's current mailing address. Upon receipt of such written request, the Settlement
27 Administrator shall confirm the claimant's entitlement to an Individual Settlement Payment and, if

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1 the individual is confirmed to be a Class Member, shall mail a hard copy of the Class Notice to the
2 updated mailing address provided by the Class Member.

3 The Parties intend that reasonable means be used to maximize the probability that all Class
4 Members shall receive the Class Notice.

5 g. Within ten (10) business days after the close of the Notice Period, the
6 Settlement Administrator will provide Defense Counsel with a report by last four digits of Social
7 Security Number listing the amount of all Individual Settlement Payments to be made to Plaintiff
8 Class Members, a list by name of all Class Members who timely opted out under Paragraph 6.4,
9 below, and a list of all Plaintiff Class Members who timely objected under Paragraph 6.5 below.
10 Within that same time period, the Settlement Administrator will provide the same list to Class
11 Counsel, except that the list provided to Class Counsel shall state only the number, and not the name,
12 of Class Members who timely opted out of the Settlement. After receiving the Settlement
13 Administrator's report, Class Counsel and Defense Counsel shall jointly review the same to
14 determine if the calculation of payments to Plaintiff Class Members is consistent with this
15 Agreement.

16 h. The Gross Settlement Fund will be paid in two equal installments. The first
17 one-half of the \$2,975,000.00 shall be paid after the court's final approval of the Class Settlement.
18 The second half of the settlement sum shall be due and payable 6 months after the court's final
19 approval of the Class Settlement.

20 i. All payroll taxes will be computed by the Settlement Administrator based on
21 the amounts actually distributed to Participating Class Members and allocated to wages, as set forth
22 herein. "Employer Taxes" shall mean Defendants' share of applicable payroll taxes, such as FICA
23 and FUTA, for that portion of the Individual Settlement Awards attributed to wages. The
24 Employee's Taxes and Requirement Withholdings will be withheld from and paid out of the Net
25 Settlement Fund. "Employee Taxes" shall mean Participating Class Members' share of all applicable
26 payroll taxes and withholdings. The Settlement Administrator shall timely and properly withhold
27 from the Individual Settlement Awards payable to Participating Class Members all applicable

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1 Employee Taxes. Payments to Participating Class Members and Plaintiffs pursuant to this Settlement
2 shall be reported by the Settlement Administrator on IRS Forms W-2 (for payments representing
3 wages) or 1099 (for all other payments), and provided to the respective Participating Class Members
4 and governmental authorities as required by law. The Settlement Administrator shall issue all reports
5 required by federal, state, and local tax agencies to document all payments made pursuant to this
6 Settlement and will recoup any employer taxes paid on unclaimed funds

7 6.4. Opt-Out Procedure. Unless a Class Member opts out of the Settlement described in
8 this Agreement, he/she shall be a Plaintiff Class Member and shall be bound by the terms and
9 conditions of this Agreement and shall also be bound by the Court's Order enjoining all Plaintiff
10 Class Members from pursuing, or seeking to reopen, any of the Settled Claims against the Released
11 Parties. A Class Member will not be entitled to opt out of the Settlement established by this
12 Agreement unless he or she makes an Opt-Out Request. An Opt-Out Request must be: (i) made in
13 writing; (ii) signed by the Class Member seeking exclusion from the Settlement; and (iii) mailed to
14 the Settlement Administrator only so that it is postmarked on or before the expiration of the Notice
15 Period. The Opt-Out Request must set forth the name of the Class Member and a statement that he or
16 she requests exclusion from the Class and does not wish to participate in the Settlement.

17 The Opt-Out Request must be completed by the Class Member seeking exclusion from the
18 Settlement. No other person may opt out for a Class Member. Any Class Member who properly opts
19 out of the Class using this procedure will not be entitled to any payment from the Cross Settlement
20 Fund and will not be bound by the Settlement or have any right to object, appeal or comment
21 thereon.

22 a. Upon receipt of any Opt-Out Request within the Notice Period, the
23 Settlement Administrator shall review the request to verify the information contained therein, and to
24 confirm that the request complies with the requirements of this Agreement.

25 b. Any Class Member who fails to submit a timely, complete and valid Opt-
26 Out Request shall be barred from opting out of this Agreement or the Settlement. The Settlement
27 Administrator shall not review or consider any Opt-Out Request postmarked after the end of the

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1 Notice Period. It shall be conclusively presumed that, if an Opt-Out Request is not postmarked on or,
2 before the end of the Notice Period or is not sent to the Settlement Administrator, the Class Member
3 did not make the request in a timely or valid manner. Under no circumstances shall the Settlement
4 Administrator have the authority to extend the deadline for Class Members to submit an Opt-Out
5 Request. Class members may not opt out of the PAGA settlement and release.

6 6.5. Excessive Opt-Out Requests. If ten percent (10%) or more Class Members timely
7 opt out of the Settlement, Defendants shall have the sole and absolute discretion to rescind/void the
8 Settlement within twenty (20) days after receiving from the Settlement Administrator the list of opt-
9 outs. Defendants agree to meet and confer in good faith with Class Counsel before rescinding or
10 voiding the Settlement. In the event that Defendants elect to rescind/void the Settlement, they shall
11 provide written notice of such rescission to Class Counsel. Such rescission shall have the same effect
12 as a termination of this Agreement for failure to satisfy a condition of settlement, and the Agreement
13 shall become null and void and have no further force or effect, and the Settlement Class certified
14 pursuant to this Agreement will be decertified for all purposes. If Defendants choose to terminate
15 this Agreement under this provision, it shall be responsible to pay the Settlement Administrator's
16 fees and costs incurred to that point.

17 6.6. Objections to Class Settlement. Any Class Member may object to the Settlement.
18 Class Members who wish to object to the Settlement must send their written objections to the Court
19 only by the close of the Notice Period. All objections will be scanned into the electronic case docket
20 and the Parties will receive electronic notices of filing. An objection must state the specific grounds
21 on which it is being made and all supporting facts. The Class Notice will state in substance:

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

25 You may object to the proposed settlement in writing. You may also appear at the Final
26 Approval Hearing, either in person or through your attorney. If you appear through your
27 own attorney, you are responsible for paying that attorney. All written objections and
supporting papers must (a) clearly identify the case and number (*Jacopetti and Davis v.*

1 *National, et al.*, Case No.: 20CV373252), (b) be submitted to the Court either by mailing
2 them to the Class Action Clerk, Superior Court of California, County of Santa Clara,
3 Dept. 3 or by filing them in person at any location of the Superior Court of California,
4 County of Santa Clara, and (c) be filed or postmarked on or before _____."

5 Class Members who fail to timely file and serve such a written statement of objection shall
6 be foreclosed from making any objection to this Settlement. Only Class Members may object to the
7 Settlement. If an objector intends to appear at the Final Approval Hearing, either in person or
8 through an attorney of his/her choice, he or she must also serve and file with his or her objection, a
9 Notice of Intention to Appear. This Paragraph shall be strictly applied and enforced. Failure to
10 comply with its terms shall render an objection ineffective and waived.

11 6.7. Funding and Distribution of Settlement. Within five (5) calendar days after the
12 Effective Date, Defendants shall transfer to the Settlement Administrator an amount equal to one-
13 half of the Gross Settlement Fund. The delivery of the second installment of the Gross Settlement
14 Fund to the Settlement Administrator shall constitute full and complete discharge of the entire
15 obligation of Defendants under this Agreement. No Released Party shall have any further obligation
16 or liability to the Plaintiffs or Class Members under this Agreement.

17 a. The distribution of Individual Settlement Payments to Plaintiff Class
18 Members shall occur no later than the Settlement Proceeds Distribution Deadline. The Settlement
19 Administrator shall be deemed to have timely distributed Individual Settlement Payments if it places
20 in the mail Individual Settlement Payments for all Plaintiff Class Members by the Settlement
21 Proceeds Distribution Deadline. No person shall have any claim against the Settlement
22 Administrator, Defendants, Class Counsel, Defense Counsel, or any other agent designated by the
23 Plaintiffs or Defendants based upon the distribution of Individual Settlement Payments made
24 substantially in accordance with this Agreement or further orders of the Court.

25 b. Any settlement checks that are not claimed or not negotiated within 90 days
26 after the distribution of Individual Settlement Payments to Plaintiff Class Members shall be void.
27 Any funds not distributed after the expiration of the settlement checks shall If any portion of this

1 amount remains after 60 days following the Effective Date, such remaining amount shall be donated
2 to CASA of Santa Clara County.

3 c. The Settlement Administrator's distribution of Class Counsel's Fees and
4 Expenses and the Incentive Award from the Gross Settlement Fund shall occur no later than the
5 Settlement Proceeds Distribution Deadline. Upon such payment, Defendants, the Released Parties,
6 Defense counsel, and the Settlement Administrator shall have no further liability or responsibility to
7 Class Counsel or to any vendors or third parties employed by the Plaintiffs or Class Counsel.

8 d. With the possible exception of the Settlement Administrator's costs (as
9 provided elsewhere in this Agreement), Defendants shall not be obligated to make any payments
10 contemplated by this Agreement unless and until the Court enters a Final Order and Final Judgment,
11 and then only after the Effective Date.

12 **VII. COURT APPROVAL AND EFFECTIVE DATES**

13 7.1. Binding Effect of Agreement on Class Members. Upon final Court approval, all
14 Plaintiff Class Members shall be bound by this Agreement, and the Action and the Settled Claims
15 shall be dismissed with prejudice and released as against the Released Parties. In addition, unless a
16 Class Member effectively opts out of the Settlement, he or she shall be bound by the Court's Order
17 enjoining all Plaintiff Class Members from pursuing or seeking to reopen Settled Claims against the
18 Released Parties.

19 7.2. Preliminary Approval of Settlement. Upon execution of this Agreement, the
20 Plaintiffs shall file a motion in the Action requesting that the Court enter a Preliminary Approval
21 Order as follows:

22 a. Preliminarily approving for settlement purposes only the proposed
23 Settlement and this Agreement;

24 b. Preliminarily approving the appointment of the Plaintiffs as representatives
25 of the Class for settlement purposes only;

26 c. Preliminarily approving the appointment of Class Counsel as counsel for the
27 Class for settlement purposes only;

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1 d. Appointing and approving the Settlement Administrator as chosen by the
2 Parties and approved by the Court, to administer the claims and settlement payment procedures
3 required by this Agreement; and

4 e. Approving the form of the Class Notice, and requiring that individualized
5 Class Notice be sent to Class Members;

6 f. Approving the plan for the provision of notice to Class Members, as stated
7 herein and in the Class Notice;

8 g. Scheduling the Final Approval Hearing for consideration of class
9 certification for settlement purposes and final approval of this Agreement;

10 h. Establishing the procedure for Class Members to opt out of the Settlement
11 and the date after which no Class Member shall be allowed to submit a request to opt out; and

12 i. Approving the procedure for Plaintiff Class Members to object to the
13 Settlement and the date after which no Class Member shall be allowed to object.

14 7.3. Non-Interference With Claims Procedure. The Parties and their counsel agree that
15 they shall not seek to solicit or otherwise encourage Class Members to submit an Opt-Out Request or
16 an objection to the Settlement or to appeal from the Final Order or Final Judgment.

17 7.4. Final Order. The Plaintiffs and Defendants request that the Court enter, after the
18 Final Approval Hearing finally approving this Agreement, a Final Order in a form substantially
19 similar to the final order attached as Exhibit 3. The Plaintiffs (or the Plaintiffs jointly with
20 Defendants) will request that the Final Order certify the Class for Settlement purposes; find that this
21 Agreement is fair, just, equitable, reasonable, adequate and in the best interests of the Class;
22 permanently enjoin all Plaintiff Class Members from pursuing or seeking to reopen Settled Claims
23 against the Released Parties; and require the Parties to carry out the provisions of this Agreement.

24 7.5. Entry of Final Judgment. The Plaintiffs (or the Plaintiffs jointly with Defendants)
25 will request that the Court enter, after the Final Approval Hearing, a Final Judgment in the form
26 substantially similar to the Final Judgment attached as Exhibit 4.

7.6. Effective Date of Agreement. The "Effective Date" of this Agreement shall be the California Court of Appeal may be timely filed, and none is filed; or, in the event there are objectors, sixty (60) days after service of notice of entry of the Final Approval Order and Judgment on the Parties and all objectors to the Settlement without any appeals or request for review being taken, or orders affirming said Final Approval Order and Judgment or denying review after exhaustion of all appellate remedies, if appeals or requests for review have been taken. The Effective Date is conditioned upon all of the following occurring:

- a. This Agreement has been signed by the Parties and Class Counsel;
- b. The Court has entered a Preliminary Approval Order substantially similar to the Preliminary Approval Order attached hereto as Exhibit 2;
- c. The Class Notice has been mailed to the Class Members as ordered by the Court in this Action;
- d. The Court has entered a Final Order in a form substantially similar to the Final Order attached hereto as Exhibit 3; and
- e. The Court has entered a Final Judgment dismissing the Action in a form substantially similar to the Final Judgment attached hereto as Exhibit 4.

7.7. Automatic Voiding of Agreement if Settlement Not Finalized. If for any reason the Settlement set forth in this Agreement does not become final, the Settlement shall be null and void and all orders, judgment, and dismissal entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status quo prior to entering this Agreement with respect to the Action, as if the Parties had never entered into this Agreement, and the settlement class certified pursuant to this Agreement will be decertified for all purposes. In addition, in such event, the Agreement (including all exhibits, drafts and related documents, papers, and communications) and all negotiations, court orders and proceedings relating thereto shall be without prejudice to the rights of any and all Parties hereto, and evidence relating to the Agreement (including all exhibits, drafts and related documents, papers, and communications) and all negotiations shall not be admissible or discoverable in the Action or otherwise.

7.8. Confidentiality and Non-Disparagement and Returning Documents. The Parties agree that the terms of the Agreement shall be confidential until the filing of Plaintiff's Motion for Preliminary Approval. This confidentiality agreement shall not prevent any counsel from conferring with and advising clients who have retained them, provided that the clients agree to abide by this temporary confidentiality agreement.

a. The Plaintiffs agree that they shall not promote, or publicize the filing of this Action, the Parties' Settlement, this Agreement and its terms, or the negotiations leading to this Agreement with anyone other than the Court. Notwithstanding the foregoing, the Plaintiffs may disclose the terms of this Agreement to their immediate family members, Class Members, to those persons to whom disclosure is necessary for the preparation of tax returns and other financial reports, and to persons to whom disclosure is ordered by a court of competent jurisdiction or otherwise required by law.

b. The Parties and their counsel agree that they will not issue any press releases, engage in any communications, or take any other action that would directly or indirectly provide the press or media or any litigation reporting service with information about this Action.

7.9. Invalidation of Agreement for Failure to Satisfy Conditions. The terms and provisions of this Agreement are not recitals but are deemed to constitute contractual terms. In the event that any of the material terms or conditions set forth in this Agreement are not fully and completely satisfied, this Agreement shall terminate and all terms of the Agreement including, but not limited to, the conditional certification of the Class, the payment of Individual Settlement Amounts to Plaintiff Class Members, the payment of attorneys' fees and costs to Class Counsel, the Incentive Award to the Plaintiffs, and the payment to the California Labor and Workplace Development Agency shall be null and void. In such event, nothing in this Agreement shall be used, construed or admissible as evidence by or against any Party as a determination, admission, or concession of any issue of law or fact in this Action, or in any other proceeding for any purpose; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend this Action as if this Agreement never existed. In addition, notwithstanding the generality of

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AGREEMENT AND STIPULATION**

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1 the foregoing, if this Agreement is terminated for failure to satisfy any of the terms or conditions of
2 this Agreement, Defendants shall not be obligated to create or maintain any type of settlement fund
3 and shall not be obligated to pay any Individual Settlement Payment to any Class Member, to Class
4 Counsel, or to the Plaintiffs.

5 **VIII. GENERAL PROVISIONS**

6 8.1. **Notices.** All notices, requests, demands and other communications required or
7 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered
8 personally or by first class mail to the Settlement Administrator and to counsel at their respective
9 addresses as set forth below:

10 **CLASS COUNSEL**

11 **PEREZ LAW OFFICES**
12 Anthony M. Perez, Jr.
13 455 Capitol Mall, Suite 231
14 Sacramento, CA 95814
15 Tel: (916) 441-0500
16 Fax: (916) 441-0555
17 aperez@perezlawoffices.com

18 **DEFENSE COUNSEL**

19 **HANSON BRIDGETT LLP**
20 Diane M. O'Malley
21 Warren F. Hodges
22 425 Market Street, 26 Floor
23 San Francisco, CA 94105
24 Tel: (415) 995-5045
25 domalley@hansonbridgett.com

26 **SETTLEMENT ADMINISTRATOR**

27 8.2. **Modification in Writing.** This Agreement may be altered, amended, modified or
28 waived, in whole or in part, only in a writing signed by all signatories to this Agreement. This
Agreement may not be amended, altered, modified or waived, in whole or in part, orally.

8.3. **Ongoing Cooperation.** The Parties shall support the Settlement, execute all
documents and take such steps as are reasonably necessary to effectuate the Settlement and the terms

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1 of this Agreement. Neither the Parties nor their counsel shall directly or indirectly encourage Class
2 Members to opt out or object to the Settlement. The execution of documents must take place prior to
3 the Final Approval Hearing.

4 8.4. Binding Agreement. This Agreement shall be binding and shall inure to the benefit
5 of the Parties and their respective successors, assigns, executors, administrators, heirs and legal
6 representatives.

7 8.5. Entire Agreement. This Agreement constitutes the full, complete and entire
8 understanding, agreement and arrangement between the Plaintiffs and the Plaintiff Class Members
9 on the one hand, and Defendants on the other hand, with respect to the Settlement of the Action and
10 the Settled Claims against the Released Parties. This Settlement Agreement supersedes any and all
11 prior oral or written understandings, agreements and arrangements between the Parties with respect
12 to the Settlement of the Action and the Settled Claims against the Released Persons, including the
13 Settlement Term Sheet reached on June 11, 2021. Except for those set forth expressly in this
14 Agreement, there are no other agreements, covenants, promises, representations or arrangements
15 between the Parties with respect to the Settlement of the Action and the Settled Claims against the
16 Released Parties. The Parties explicitly recognize California Civil Code § 1625 and California Code
17 of Civil Procedure § 1856(e), which provide that a written agreement is to be construed according to
18 its terms and may not be varied or contradicted by extrinsic evidence, and agree that no such
19 extrinsic oral or written representations or terms shall modify, vary, or contradict the terms of this
20 Agreement.

21 8.6. Multiple Originals/Execution in Counterpart. This Agreement may be signed in one
22 or more counterparts. All executed copies of this Agreement, and photocopies thereof (including
23 facsimile copies of the signature pages), shall have the same force and effect and shall be as legally
24 binding and enforceable as the original.

25 8.7. Captions. The captions and section numbers in this Agreement are inserted for the
26 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
27 provisions of this Agreement.

8.8. Governing Law. This Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California.

8.9. Reservation of Jurisdiction. Notwithstanding the dismissal of this Action and entry of Final Judgment, the Court shall retain exclusive jurisdiction for purposes of interpreting and enforcing the terms of this Agreement.

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

8.11. Severability. The Parties to this Agreement agree, covenant, and represent that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each and every provision of this Agreement shall be considered severable, except for the release provisions of Section IV of this Agreement. If a court of competent jurisdiction finds the release provisions of Section IV of this Agreement to be unenforceable or invalid as against a Class Member, then this Agreement shall become voidable, and the payments made pursuant to this Agreement to that Class Member shall be returned to Defendants by that Class Member as to whom the release provisions have been found unenforceable or invalid. If a court of competent jurisdiction finds any provision, other than the release provisions of Section IV, or part thereof to be invalid or unenforceable for any reason, that provision, or part thereof, shall be severed from the Agreement, and all of the remaining provisions of this Agreement shall remain in full force and effect.

8.12. Warranties and Representations. With respect to themselves, each of the Parties to this Agreement and or their agent or counsel represents, covenants and warrants that (a) they have full power and authority to enter into and consummate all transactions contemplated by this Agreement and have duly authorized the execution, delivery and performance of this Agreement; and (b) the person executing this Agreement has the full right, power and authority to enter into this

1 Agreement on behalf of the party for whom he/she has executed this Agreement, and the full right,
2 power and authority to execute any and all necessary instruments in connection herewith, and to
3 fully bind such party to the terms and obligations of this Agreement.

4 8.13. Representation by Counsel. The Parties acknowledge that they have been
5 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
6 and that this Agreement has been executed with the consent and advice of counsel. Further, the
7 Plaintiffs and Class Counsel warrant and represent that there are no liens on the Agreement, and that
8 after entry by the Court of the Final Order and Final Judgment, Defendants may distribute funds to
9 Plaintiff Class Members, Class Counsel, and the Plaintiffs as provided by this Agreement.

10 8.14. Action to Enforce Agreement. In any suit or court action to enforce the terms of this
11 Agreement, the prevailing party shall be entitled to recover her or its attorneys' fees and costs.

12 8.15. Authorization by Plaintiffs. The Plaintiffs authorize Class Counsel to sign this
13 Agreement and further agree not to request to be excluded from the Class and not to object to any
14 terms of this Agreement. Any such request for exclusion or objection shall therefore be void and of
15 no force or effect.

16
17
18 [THIS SECTION INTENTIONALLY LEFT BLANK]
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23 IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on
24 the date below their signatures or the signature of their representatives. The date of the Agreement
25 shall be the date of the latest signature.

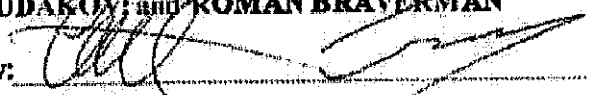
26 IT IS SO STIPULATED AND AGREED:
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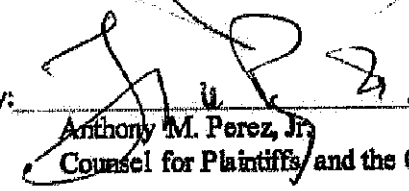
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DEFENDANTS NATIONAL HOME HEALTH
SERVICES, INC.; NATIONAL HOME HEALTH
SERVICES-WEST, INC.; NATIONAL HOME
HEALTH STAFFING, INC.; NATIONAL HOME
HEALTH THERAPY STAFFING, INC.;
AVALON HOME HEALTH, INC.; AVATAR
HEALTH MONITORING, INC.; ALEX
RUDAKOV; and ROMAN BRAVERMAN

Dated: 7/21/2021 2021

By: 

Dated: 7/26/2021 2021

By: 
Anthony M. Perez, Jr.
Counsel for Plaintiffs and the Class