

Samuel A. Wong (SBN 217104)
Kashif Haque (SBN 218672)
Jessica L. Campbell (SBN 280626)
Fawn F. Bekam (SBN 307312)
AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
Irvine, CA 92618
Telephone: 949.379.6250
Facsimile: 949.379.6251
swong@aegislawfirm.com
khaque@aegislawfirm.com
jcampbell@aegislawfirm.com
fbekam@aegislawfirm.com

Carolyn H. Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Michelle S. Lim (SBN 315691)
**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
dleimbach@schneiderwallace.com
mlim@schneiderwallace.com

*Attorneys for Plaintiffs, the Putative Collective,
the Putative Class, Aggrieved Employees,
and on behalf of the State of California*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

ANDREA SALONGA and DANIELA
MELGOZA, individually and on behalf of all
others similarly situated and the State of
California,

Plaintiffs,

v.

AEGIS SENIOR COMMUNITIES, LLC,
d/b/a AEGIS LIVING; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 22CV007450

**DECLARATION OF CAROLYN H.
COTTRELL IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT**

Date: January 25, 2024

Time: 3:00 p.m.

Dept: 514

Judge: Noël Wise

Reservation ID: 106613794847

1 **DECLARATION OF CAROLYN H. COTTRELL**

2 I, Carolyn H. Cottrell, declare as follows:

3 1. I am an attorney duly licensed and in good standing to practice law in the courts of
4 California (No. 166977), I am admitted to the United States District Courts for the Northern, Eastern,
5 Central, and Southern Districts of California, and I am admitted to the United States Circuit Court
6 of Appeals for the Ninth Circuit.

7 2. I am a partner at Schneider Wallace Cottrell Konecky LLP (“SWCK”). SWCK
8 specializes in class, collective, and PAGA litigation in state and federal court.

9 3. I, alongside Aegis Law Firm, PC, am counsel of record for Plaintiffs Andrea Salonga
10 and Daniela Melgoza (“Plaintiffs”), on behalf of themselves, the putative Class and Collective
11 members, the State of California, and the Aggrieved Employees in the above-captioned case. I
12 submit this declaration in support of the Motion for Preliminary Approval of Settlement. I am
13 familiar with the file, the documents, and the history related to this case. The following statements
14 are based on my personal knowledge and review of the files. If called to do so, I could and would
15 testify competently thereto.

16 4. A true and correct copy of the fully executed Class and Collective Action Settlement
17 Agreement and Release (“Settlement”) is attached hereto as **Exhibit A**. The proposed Class Notice
18 is attached to the Settlement as **Exhibit B**. The proposed Collective Notice is attached to the
19 Settlement as **Exhibit C**.

20 5. Pursuant to Cal. Lab. Code § 2699(1)(2), a copy of the Settlement, as well as
21 documents submitted to obtain preliminary approval of the Settlement, are being submitted to the
22 California Labor and Workforce Development Agency (“LWDA”) via online submission
23 concurrently with the filing of this Motion.

24 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

25 6. SWCK is regarded as one of the leading private plaintiffs’ firms in wage and hour
26 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
27 of the “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys
28 have litigated major wage and hour class actions, have won several prestigious awards, and sit on
29 important boards and committees in the legal community. SWCK was founded by Todd Schneider
30 in 1993, and I have been a member of the firm since 1995.

31 7. SWCK has acted or is acting as class counsel in numerous cases. Cases which have
32 been certified and/or settled as class actions include, but are not limited to, the following: *Sishi, et*
al. v. Eskaton Properties Inc., et al., (Case No. RG21100764) (Alameda County Superior Court,

1 August 4, 2023) (final approval of California class and PAGA representative action settlement);
2 *Wright, et al. v. Frontier Management LLC, et al.*, (Case No. 2:19-cv-01767-JAM-CKD) (Eastern
3 District of California, March 13, 2023) (final approval of California, Illinois, Oregon, and
4 Washington class and Fair Labor Standards Act (“FLSA”) collective action settlement); *Campos v.*
5 *Extra Express (Cerritos) Inc.*, Case No. BC715057 (Los Angeles Super. Ct., Jan. 18, 2023) (final
6 approval of California law wage and hour class action settlement alleging misclassification of short
7 haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*, Case No. 4:17-cv-00549-GKF-
8 CDL (N.D. Okla., Oct. 31, 2022) (final approval of California and Oklahoma class and FLSA
9 collective action where Plaintiff obtained class certification on behalf of misclassified truck drivers);
10 *Ramirez v. Rite Aid Corp., et al.*, Case No. CV 20-3531-GW-SKx (C.D. Cal., May 19, 2022) (final
11 approval of California class action and PAGA representative action); *Madrigal v. Mission Lakes*
12 *Country Club, Inc.*, Case No. RIC2003428 (Riverside Super. Ct., May 18, 2022) (final approval of
13 California class action and PAGA representative action); *Hazel v. Himage Solutions, Inc.*, Case
14 No. RG20068159 (Alameda Super. Ct., Nov. 2, 2021) (final approval of a California class action
15 settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages,
16 failure to provide meal and rest breaks, failure to reimburse necessary business expenditures, waiting
17 time penalties, and failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI*
18 *Management, Inc.*, Case No. 34-2018-00237315 (Sacramento Super. Ct., Oct. 20, 2021) (final
19 approval of a California class action settlement in action that alleged improper billing for workers
20 compensation charges by an apartment complex management company); *Etcheverry v. Franciscan*
21 *Health System*, Case No. 3:19-cv-05261-RJB-MAT (W.D. Wash., Oct. 19, 2021) (final approval of
22 hybrid FLSA and Washington class action); *Jean-Pierre v. J&L Cable TV Services, Inc.*, Case No.
23 1:18-cv-11499-MLW (D. Mass., Aug. 31, 2021) (final approval of hybrid FLSA and Massachusetts,
24 New Hampshire, Maine, and Pennsylvania class action); *Amaraut v. Sprint/United Management Co.*,
25 Case No. 19-cv-411-WQH-AHG (S.D. Cal, Aug. 5, 2021) (final approval of hybrid FLSA and
26 California class action); *Diaz v. TAK Communications CA, Inc.*, Case No. RG20064706 (Alameda
27 Super. Ct., July 27, 2021) (final approval of hybrid FLSA and California class action); *Villafan v.*
28 *Broadspectrum Downstream Services, Inc.*, Case No. 3:18-cv-06741-LB (N.D. Cal. Apr. 9, 2021)
29 (final approval of class and collective action settlement for failure to pay minimum wages and
30 overtime rates, failure to provide meal and rest breaks, failure to reimburse business expenses, and
31 failure to provide itemized wage statements); *Jones v. Defendants, Inc.*, Case No. 3:17-cv-02229-
32 EMC (N.D. Cal., June 1, 2020) (final approval of hybrid FLSA and California, Washington, Illinois,
Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure

1 to provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure
2 to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases*, Case No. JCCP 4957
3 (Orange Super. Ct., January 31, 2020) (final approval of a class action settlement for failure to pay
4 for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses,
5 waiting time penalties, and failure to provide itemized wage statements, under California law); *Soto*
6 *v. O.C. Communications, Inc.*, Case No. 3:17-cv-00251-VC (N.D. Cal., Oct. 23, 2019) (final
7 approval of a hybrid FLSA and California and Washington law Rule 23 action with joint employer
8 allegations); *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries*, Case No. 34-
9 2017-00223592 (Sacramento Super. Ct.) (final approval of a class action settlement for failure to
10 pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and
11 rest breaks, waiting time penalties, and failure to provide itemized wage statements, under California
12 law); *Van Liew v. North Star Emergency Services, Inc.*, Case No. RG17876878 (Alameda Super.
13 Ct.) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay
14 minimum and overtime wages, failure to provide meal and rest breaks, failure to reimburse for
15 necessary business expenditures, waiting time penalties, and failure to provide itemized wage
16 statements, under federal law); *Asalati v. Intel Corp.*, Case No. 16cv302615 (Santa Clara Super. Ct.)
17 (final approval of a class and collective action settlement for failure to pay for all hours worked,
18 failure to pay overtime, failure to provide meal and rest breaks, failure to reimburse for necessary
19 business expenditures, failure to adhere to California record keeping requirements, waiting time
20 penalties, and failure to provide itemized wage statements, under federal and California law);
21 *Harmon v. Diamond Wireless, LLC*, Case No. 34-2012-00118898 (Sacramento Super. Ct.) (final
22 approval of a class action settlement for failure to pay wages free and clear, failure to pay overtime
23 and minimum wages, failure to provide meal and rest breaks, failure to pay full wages when due,
24 failure to adhere to California record keeping requirements, and failure to provide adequate seating,
25 under California law); *Aguilar v. Hall AG Enterprises, Inc.*, Case No. BCV-16-10994-DRL (Kern
26 Super. Ct.) (final approval of a class action settlement for failure to provide meal and rest periods,
27 failure to compensate for all hours worked, failure to pay minimum and overtime wages, waiting
28 time penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages,
29 under California law); *Viceral and Krueger v. Mistras Group, Inc.*, Case No. 3:15-cv-02198-EMC)
30 (N.D. Cal.) (final approval of a class and collective action settlement for failure to compensate for
31 all hours worked, including overtime, under federal and California law); *Jeter-Polk v. Casual Male*
32 *Store, LLC*, Case No. 5:14-CV-00891 (C.D. Cal.) (final approval of a class action settlement for
failure to provide meal and rest periods, failure to compensate for all hours worked, failure to pay

1 overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized wage
2 statements); *Meza v. S.S. Skikos, Inc.*, Case No. 15-cv-01889-TEH (N.D. Cal.) (final approval of
3 class and collective action settlement for failure to compensate for all hours worked, including
4 overtime, under federal and California law, failure to provide meal and rest breaks, failure to
5 reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure
6 to provide accurate itemized wage statements); *Holmes v. Xpress Global Systems, Inc.*, Case No. 34-
7 2015-00180822 (Sacramento Super. Ct.) (final approval of a class action settlement for failure to
8 provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud v.*
9 *Sprint Nextel Corp.*, Case No. 3:13-cv-04357-VC (N.D. Cal.) (final approval of a class and collective
10 action settlement for failure to compensate for all hours worked, including overtime, failure to
11 provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay
12 full wages upon termination to, and failure to provide accurate itemized wage statements); *Molina*
13 *v. Railworks Track Systems, Inc.*, Case No. BCV-15-10135 (Kern Super. Ct.) (final approval of a
14 class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime,
15 off-the-clocker work, failure to pay full wages upon termination to, and failure to provide accurate
16 itemized wage statements); *Allen v. County of Monterey*, Case No. 5:13-cv-01659 (N.D. Cal.)
17 (settlement between FLSA Plaintiffs and Defendant to provide relief to affected employees); among
18 many others.

19 8. Nearly my entire legal career has been devoted to advocating for the rights of
20 individuals who have been subjected to illegal pay policies, discrimination, harassment, and
21 retaliation, and representing employees in wage and hour and discrimination class actions. I have
22 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I
23 manage many of the firm's current cases in these areas. I have had memberships with Public Justice,
24 the National Employment Lawyers Association, the California Employment Lawyers Association,
25 and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco
26 Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of the "Top
27 Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman Trial
28 Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer
29 every year since 2014. I earned my bachelor's degree from the University of California, and I am a
30 graduate of the University of the Pacific, McGeorge School of Law.

FACTUAL AND PROCEDURAL BACKGROUND

Pleadings

9. On February 23, 2022, Plaintiff Melgoza provided written notice to the LWDA of her intent to pursue PAGA claims against Defendant, based on alleged violations of several California Labor Code provisions.

10. On March 18, 2022, Plaintiff filed a putative class and collective action against Defendant in the United States District Court for the Northern District of California, Case No. 3-22-cv-01756-LB, asserting claims under the California Labor Code, the California Business & Professions Code, and the FLSA for: (1) violations of the FLSA, 29 U.S.C. § 201 et seq.; (2) failure to pay for all hours worked in violation of Cal. Lab. Code § 204; (3) failure to pay minimum wage in violation of Cal. Lab. Code §§ 204, 1194, 1197, and 1198; (4) failure to pay overtime wages in violation of Cal. Lab. Code § 510; (5) failure to authorize and permit and/or make available meal and rest periods in violation of Cal. Lab. Code §§ 226.7 and 512; (6) failure to provide timely and accurate itemized wage statements in violation of Cal. Lab. Code § 226; (6) waiting time penalties under Cal. Lab. Code §§ 201 – 203; and (7) unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq.

11. On May 5, 2022, Melgoza filed a putative representative action against Defendant, in San Francisco Superior Court, Case No. CGC-22-599517, asserting two causes of action for civil penalties under PAGA based on the following alleged violations of Cal. Lab. Code §§ 201-203, 204, 225.5, 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1197, 1198, and 2802, and IWC Wage Orders 4-2001 and 5-2001. On May 10, 2022, Melgoza submitted this PAGA Complaint to the LWDA.

12. As part of the Settlement, the Parties agreed to consolidate the operative complaints in these two actions and in the two actions of *Salonga v. Aegis Senior Communities LLC*, United States District Court, Northern District of California, Case No. 3-22-cv-00525-LB, and *Salonga v. Aegis Senior Communities LLC*, Superior Court of California for the County of Alameda, Case No. 22CV007450, for settlement purposes only and to avoid duplication of settlement approval proceedings. That consolidated complaint was filed in this Court pursuant to stipulated order on September 20, 2023.

13. Pursuant to the operative complaint and their respective letters to the LWDA, Plaintiffs allege claims under the following statutes: FLSA, 29 U.S.C. § 201 et seq., Cal. Lab. Code §§ 201, 202, 203, 204, 210, 225.5, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, as well as alleged violations of

1 Industrial Welfare Commission (“IWC”) Wage Orders, and unlawful business practices in violation
2 of Cal. Bus. & Prof. Code § 17200 *et seq.*

3 **Discovery**

4 14. In anticipation of mediation, the Parties conducted informal discovery in the Action.
5 Defendant provided a sampling of approximately 10% of time, pay, and identifying records for all
6 putative Class and Collective Members as defined in the complaints;¹ arbitration agreements; wage
7 statements; time adjustment forms; employee handbooks for California and non-California
8 employees, including addenda for employees in California, Nevada, and Washington; meal and rest
9 break policies; job descriptions; and prior class action settlement documents in *Conlin v. Aegis*
10 *Senior Communities, LLC*, N.D. Cal. Case No. 5:17-cv-05534-LHK (releasing claims for all persons
11 who worked for Defendant as a non-exempt employee in California at any time between August 18,
12 2013 and February 25, 2018).

13 15. Class Counsel conducted dozens of interviews with putative Class Members who
14 worked in California, as well as putative Collective Members who worked in Washington and
15 Nevada. This investigation helped Class Counsel gather facts and identify potential witnesses.

16 16. Plaintiffs’ Counsel used this information to perform a careful and extensive analysis
17 of the effects of Defendant’s compensation policies and practices on Class Members’ pay. From
18 Plaintiffs’ Counsel’s investigations, Plaintiffs’ Counsel determined and confirmed the following
19 data points: (1) there are approximately 4,129 Class Members who worked 270,813 Workweeks
20 during the Class Period; (2) there are approximately 1,525 Aggrieved Employees who worked
21 32,292 Pay Periods during the PAGA Period; (3) there are approximately 80 FLSA Collective
22 Members who worked 4,000 Workweeks affected by the Kronos breach during the Collective
23 Period; (4) the average time worked off-the-clock was three minutes per shift for Class Members;
24 and (5) the average regular rate of pay was \$17.18/hour for Class Members and \$19.82/hour for
25 Collective Members.

26 17. Based on this information and Defendant’s data, Class Counsel’s expert, Berger
27 Consulting Group, performed a damages analysis.

28
29
30 ¹ A total of 4,129 putative Class Members and 5,122 putative Collective Members were originally
31 sampled prior to the mediation; following mediation, however, the Parties agreed to settle only a
32 small portion of the putative Collective to only cover an estimated 4,000 workweeks affected by the
Kronos breach (as opposed to the estimated 241,716 total workweeks for the entire putative
Collective, as defined by the Complaint. The sampling provided to Plaintiffs’ Counsel also included
“true-up” pay records for reconciled wage payments due to the Kronos breach.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2

2
3
4
5
6

7
8
9
0

1

2
3
4
5
6
7
8
9
0

21

22

23
24
25

26
27
28
29

30
31
32

1 (d) Administration Costs (not to exceed \$58,000); and (e) the PAGA Settlement Amount (\$75,000,
2 of which \$18,750, or 25%, will be distributed to Aggrieved Employees, and \$56,250, or 75%, will
3 be paid to the LWDA).

4 26. The estimated Net Settlement Amount provides an estimated average recovery of
5 \$423 per Participating Individual (i.e., Participating Class Members, Opt-In Plaintiffs, and
6 Aggrieved Employees), assuming 100% participation in the Settlement. This estimate also assumes
7 that all individuals worked an equal number of workweeks and does not include the workweek
8 weighting analysis provided for in the Settlement, ¶ 10.3.5.5. This recovery easily falls within the
9 range of reasonableness established by California and Federal case law.

10 27. The Parties have agreed to retain Phoenix as the Settlement Administrator and have
11 determined that its bid for administration is fair.

12 28. To my knowledge, Phoenix has no financial relationship with Plaintiffs, Class
13 Counsel, or Defense Counsel.

14 29. The proposed Settlement provides substantial monetary recovery for the Class and
15 Collective and satisfies all required due process protections.

16 **DAMAGES ANALYSIS**

17 30. Class Counsel used the data Defendant provided prior to mediation to perform a
18 careful and extensive analysis of the viability and risks of pursuing Plaintiffs' claims compared to
19 the benefits of a settlement. Class Counsel prepared a Damages Analysis that provided the estimated
20 recovery for Plaintiffs' claims.

21 31. The Gross Settlement Amount of \$3,000,000 represents 27% of the \$11,198,578 total
22 estimated substantive exposure in this action. For purposes of estimating these damages, Plaintiffs'
23 Counsel's expert calculated the maximum potential exposure analysis of all Class, PAGA, and
24 FLSA claims, which was subsequently revised to reflect various considerations.

25 32. Plaintiffs' estimated damages for the various claims at issue are further broken down
26 as follows:

- 27 a. Plaintiffs estimated the damages for the California meal and rest break claims
28 at approximately \$7,288,721. This also includes damages for late and missed
29 meal breaks plus improperly calculated meal period premiums for failure to
30 incorporate split shift premiums into the regular rate calculation based on
31 *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858, 878 (2021).
32

- b. Plaintiffs estimated the damages for off-the-clock work and applicable overtime for California minimum and overtime claims at approximately \$1,096,684.
- c. Plaintiffs estimated the minimum wage and overtime damages under the FLSA at approximately \$2,813,173, assuming a 100% opt-in rate. Plaintiffs further estimated liquidated damages under the FLSA at approximately \$2,813,173.
- d. The total estimated substantive exposure for these Class and FLSA claims (excluding liquidating damages) provided above, is \$11,198,578.
- e. Plaintiffs further calculated the derivative exposure for the waiting time and wage statement penalties under Cal. Lab. Code 203 and 226. Plaintiffs estimated the waiting time penalties at approximately \$11,208,350, and the wage statement penalties at approximately \$4,499,801.
- f. Plaintiffs estimated the PAGA penalties at approximately \$2,855,551, which was calculated by applying \$100 per Aggrieved Employee per pay period.
- g. The total estimated derivative exposure for the waiting time, wage statement, and PAGA penalties, as well as liquidated damages under the FLSA, is approximately \$21,376,875.

33. The estimation of the exposure was based on the following assumptions, which were based on Plaintiffs' Counsel substantial investigation: that Plaintiffs will fully certify and prevail on all causes of action, can prove 3 minutes of off-the-clock work per Class Member and Collective Member, can prove that approximately 35% of rest breaks were noncompliant without corresponding premiums paid.

34. The damages analysis reflects and is reduced the effect of the prior *Conlin v. Aegis Senior Living Communities LLC* settlement of \$410,000. In *Conlin*, I understand the settlement was reached on behalf of 3,620 non-exempt employees who worked for Aegis in California between August 18, 2013 and February 25, 2018, which overlaps the scope of the California Class period in this action by a few months, for a total of \$410,00, of which \$102,500 was approved for reasonable attorneys' fees. (*Conlin v. Aegis Senior Living Communities LLC*, Case No. 17-CV-05534-LHK (N.D. Cal. Nov. 29, 2018), ECF Nos. 52 [final approval order], 32-3 [settlement].) The *Conlin* settlement represented over 100% of "unpaid wages," but an unknown percentage of total potential exposure, which would include statutory penalties. By comparison, I understand *Conlin* provided an average estimated recovery of \$113 for Class Members.

35. Plaintiffs and Plaintiffs' Counsel investigated their expense reimbursement claims, including the interviews with Class Members described above. After investigation, Plaintiffs determined significant uncertainty on the actual value and scope of the reimbursement claims exist, and the value of these claims were, although substantial, minimal. While Plaintiffs believed, and continue to believe, the claims have merit and were properly alleged in these matters, and contend Defendant has significant exposure on Plaintiffs' reimbursement claims, given the uncertainty surrounding the certifiability of these claims, Plaintiffs discounted these potential damages from their analysis.

36. These figures provided benchmarks for Plaintiffs and Plaintiffs' Counsel to gauge settlement offers, compared to a hypothetical total estimated exposure that assumes complete success on every claim and overcoming each of Defendant's defenses.

37. Given the broad scope and magnitude of risks, Plaintiffs' Counsel concluded that a settlement that provides a material percentage of Plaintiffs' damages estimate would be a beneficial and just result for the Class and Collective.

RISKS OF LITIGATION

38. Absent this Settlement, I estimate Plaintiffs' Counsel's fees and costs would far exceed \$3,000,000 to pursue these claims on behalf of Class Members. Here, the certain benefits of the Settlement must be considered in conjunction with the risks of continuing litigation, which Class Counsel carefully assessed. Litigating the Class claims in this action would require substantial additional preparation and discovery, involving the depositions of Class Members and experts, presentation of witnesses at trial, and the analysis, preparation, and presentation of voluminous documentary evidence. Such efforts would likely take many more months, if not years, and would necessitate expert witness testimony and significant additional litigation, including potential appellate litigation.

39. Additionally, Plaintiff's derivative claims regarding waiting time penalties, accurate wage statements, and PAGA penalties rise and fall with Plaintiff's other wage payment claims. For example, Plaintiff would recover nothing under Cal. Lab. Code § 203 if they were unable to prove the underlying claims or defeat a "good faith" dispute defense. *See* Cal. Code Regs. Tit. 8, § 13520. While Plaintiff believes that she would prevail on these issues and others, Plaintiff recognizes the risk that a fact finder may find for Defendants on one or more of these issues and may find damages to be significantly less than what Plaintiffs claim.

40. Throughout this litigation, Defendant has vigorously denied the allegations in the operative Complaint, and denied all liability. Defendant has taken the position that this case is not

1 suitable for class treatment and has asserted that it has fully complied with its obligations under
2 California and Federal law. Defendant has asserted numerous legal and factual grounds available to
3 defend this action, all of which would present difficult hurdles for Plaintiffs.

4 41. Specifically, Defendant may argue that some or all of the off-the-clock work is *de*
5 *minimis* and not compensable under the relevant wage and hour laws at issue. Defendant may also
6 assert that it maintains compliant policies to compensate Class Members for all work during the
7 Class Period.

8 42. With respect to Plaintiffs' meal and rest period claims, Defendant may assert that it
9 maintains strong policies regarding meal and rest periods (by providing California Class Members
10 with a "Time Adjustment Form" to report missed/waived meal breaks), and that it complies with all
11 meal and rest period requirements under the law.

12 43. With respect to Plaintiffs' expense reimbursement claim, Defendant may assert that
13 Class Members were not required to use their cell phones to access their work email or wage
14 statements.

15 44. While Plaintiffs believe that they would have prevailed on these issues and others,
16 they also realistically recognize the risk that a fact finder may have found for Defendant on one or
17 more of these issues and or found damages to be significantly less than what Plaintiffs claim.

18 45. Given the broad scope and magnitude of risks, I concluded that the Settlement here
19 that provides a material percentage of the damages estimate is a beneficial and just result for the
20 Class and Collective.

21 **PLAINTIFFS' SERVICE AWARDS**

22 46. The Named Plaintiffs in this Action have contributed substantial time and efforts over
23 year and a half in pursuing the Class, FLSA, and PAGA claims, and their efforts were crucial in this
24 case.

25 47. Plaintiff Melgoza had numerous discussions with my firm, worked with my firm to
26 review facts and answer questions, assisted my firm in her mediation efforts, and stayed informed
27 about the case at all times since she became a class representative.

28 48. As a result of their service, Plaintiffs subjected themselves to considerable risks with
29 regards to having their names in the public forum.

30 49. Plaintiffs' requested service awards in the amount of \$10,000.00 each are reasonable
31 considering the efforts they made and the risks they took in prosecuting this Action to obtain the
32 Settlement, as well as the broader release they have agreed to than those of the Class and Collective.

ATTORNEYS' FEES AND COSTS

50. Plaintiffs will seek reasonable attorneys' fees and costs from the Gross Settlement Amount. Plaintiffs' Counsel's lodestar amount, which will be provided with the fee motion in advance of final approval, supports this request and will only increase with preparation and attendance at the preliminary and final approval hearings, further communications with Class Members, and Settlement administration and oversight.

51. Under the terms of the Settlement, Class Counsel may seek fees not to exceed 35% of the Gross Settlement Amount, or \$1,050,000, and actual costs up to \$35,000.00. Plaintiffs' Counsel's fee request of 35% of the Gross Settlement Amount is well within the range customarily approved by California and Federal courts in comparable class and collective actions.

52. SWCK and Aegis have entered a fee-splitting agreement, which Plaintiffs approved in writing.

53. In this case, there was no guarantee of compensation or reimbursement. Rather, Plaintiffs' Counsel has undertaken all the risks of this litigation on a completely contingent fee basis. The inherent risk of proving liability and damages on a class-wide basis and Defendant's representation by skillful counsel confront Plaintiffs' Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case. Nevertheless, Plaintiffs and Class Counsel have committed themselves to developing and pressing Plaintiffs' claims to enforce the employees' legal rights and maximize the recovery for the Class and Collective.

54. This commitment and the risks involved are precisely the reasons for multipliers in contingency fee cases. As Class and Collective Members will receive a significant payment if the Settlement is approved, Plaintiffs' Counsel seeks a reasonable fee award for their efforts and the risk they have assumed. Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (i.e., if the client paid the bill monthly), and that the greater the risk, the greater the "enhancement." Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be better able to obtain qualified counsel.

1 55. Plaintiffs' Counsel's expenses, which will also be provided with the fee motion in
2 advance of final approval, are reasonable, were necessary to the prosecution, and are customarily
3 billed to fee-paying clients.

4 **CLASS AND COLLECTIVE CERTIFICATION**

5 56. Plaintiffs contend that class and collective action treatment is warranted in this action
6 based on Defendant's common course of conduct. The benefits and efficiencies of this proposed
7 Settlement, when compared to continued litigation of this case on either a class basis or through
8 multiple individual suits, further justify certification of the proposed Class and Collective.

9 57. The Settlement specifically defines the Class as Plaintiffs and all individuals employed
10 by Defendant in non-exempt positions in the State of California at any time during the time period
11 from May 30, 2017, to and including May 28, 2023. (Settlement, ¶¶ 1.8, 1.10.) The estimated 4,129
12 potential Class and 80 Collective Members are easily identifiable and can be easily located from
13 Defendant's records.

14 58. Plaintiffs also contend that Defendant's class-wide policies and procedures raise
15 common issues of law and fact that are applicable to the claims of Plaintiffs and Class Members.

16 59. At issue are Defendant's policies and procedures applied uniformly to Class Members,
17 including Defendant's policies and procedures for compensating employees for off-the-clock work
18 and overtime work, Defendant's policies and procedures for meal and rest periods, Defendant's
19 policies and procedures for expense reimbursements, and Defendant's maintenance of working
20 conditions resulting in employees spending unrecorded and uncompensated time working.

21 60. Plaintiffs contend that they, like other Class Members, were subject to Defendant's
22 policies and procedures described above, and suffered damages from the alleged wage and hour
23 violations that emanated as a result. Plaintiffs further assert that the Class Members were subjected
24 to the same illegal practices and policies to which Plaintiffs were subjected and the Class claims are
25 based on the same legal theory as Plaintiffs' individual claims.

26 61. The Collective Members are also similarly situated because they are subject to a
27 common practice or policy in violation of the FLSA. Defendant maintains various common policies
28 and practices as to what work it compensates and what work it does not compensate and applies
29 these policies and practices to the Collective members.

30
31 I declare under penalty of perjury under the laws of the State of California that the foregoing
32 is true and correct. Executed on October 25, 2023, at Emeryville, California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32



Carolyn H. Cottrell

EXHIBIT A

CLASS AND COLLECTIVE ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Agreement”) is entered into between Plaintiffs Andrea Martinez Salonga and Daniela Melgoza (“Plaintiffs”), individually and on behalf of the putative class and collective members, the State of California, and the allegedly aggrieved employees, on the one hand, and Defendant Aegis Senior Communities, LLC d/b/a Aegis Living (“Defendant”), on the other hand. The Agreement refers to Plaintiffs and Defendant collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS

The following terms used in this Agreement shall have the meanings ascribed to them below:

1.1 **“Action”** means each and all of the following lawsuits subject to this Settlement:

1.1.1 *Andrea Salonga, et al. v. Aegis Senior Communities, LLC*, originally filed in the Superior Court of California for the County of Alameda, Case No. 21CV003128, and subsequently removed to United States District Court for the Northern District of California, in Case No. 3-22-cv-00525-LB (“*Salonga I*”).

1.1.2 *Andrea Salonga v. Aegis Senior Communities, LLC*, Superior Court of California for the County of Alameda, Case No. 22CV007450 (“*Salonga II*”).

1.1.3 *Daniela Melgoza v. Aegis Senior Communities, LLC d/b/a Aegis Living*, United States District Court for the Northern District of California, Case No. 3-22-cv-01756-LB (“*Melgoza I*”).

1.1.4 *Daniela Melgoza, et al. v. Aegis Senior Communities, LLC d/b/a Aegis Living*, Superior Court of California, County of San Francisco, Case No. CGC-22-599517 (“*Melgoza II*”).

1.2 **“Administrator”** means Phoenix Settlement Administrators, the third-party class action settlement administrator the Parties have selected to handle the administration of this Settlement, subject to approval by the Court.

1.3 **“Administration Costs”** means the amount estimated to not exceed Fifty-Eight Thousand Dollars (\$58,000.00), which is the portion of the Gross Settlement Amount to be paid to the Administrator for its costs in connection with administering the terms of this Agreement, including the costs associated with sending the Class Notice, the Collective Notice, and the Settlement Payments to Participating Individuals.

1.4 **“Aggrieved Employees”** means all individuals who all individuals who were employed by Defendant in non-exempt positions in the State of California at any time during the PAGA Period.

1.5 **“Class Counsel”** means Schneider Wallace Cottrell Konecky LLP and Aegis Law Firm, APC.

- 1.6 **“Class Counsel’s Costs Award”** means the amount, if any, the Court authorizes to be paid to Class Counsel in reimbursement of reasonable litigation expenses Class Counsel incurred in connection with this Action, up to Thirty-Five Thousand Dollars (\$35,000), including in connection with Class Counsel’s pre-filing investigation, their filing of the Action, all related litigation activities, and all post-Settlement compliance efforts.
- 1.7 **“Class List”** means the following information regarding Class Members, Collective Members, and Aggrieved Employees that Defendant will in good faith compile from their records and provide to the Administrator: each such individual’s full name, last known mailing address, email address (if available), telephone number (if available), and social security numbers or tax ID numbers of each Class Member. The Class List shall also include the total number of Workweek(s) during which each Class Member was employed by Defendant in a non-exempt position in the State of California during the Class Period, the total number of PAGA Pay Period(s) during which each Aggrieved Employee was employed by Defendant in a non-exempt position in the State of California during the PAGA Period, and the total number of Workweeks during which each Collective Member was employed by Defendant in a non-exempt position outside the State of California during the Collective Period.
- 1.8 **“Class Members”** means Plaintiffs and all individuals employed by Defendant in non-exempt positions in the State of California at any time during the Class Period.
- 1.9 **“Class Notice”** means the Notice of Class Action Settlement to be sent to Class Members and Aggrieved Employees substantially in the form attached as **Exhibit B** hereto, or as approved by the Court.
- 1.10 **“Class Period”** means the time period from May 30, 2017, to and including May 28, 2023 (i.e., 60 days after the date of the Parties’ tentative settlement agreement).
- 1.11 **“Collective Notice”** means the Notice of Collective Action Settlement to be sent to any and all Collective Members who are not Class Members substantially in the form attached hereto as **Exhibit C**, or as approved by the Court.
- 1.12 **“Collective Members”** means a certified collective for settlement purposes only pursuant to 29 U.S.C. § 216(b) and includes all individuals who were employed by Defendant in non-exempt positions anywhere in the United States of America at any time during the Collective Period.
- 1.13 **“Collective Period”** means the time period from November 14, 2021 to May 14, 2022.
- 1.14 **“Court”** means the Superior Court of California for the County of Alameda.
- 1.15 **“Defendant”** means Aegis Senior Communities, LLC d/b/a Aegis Living.
- 1.16 **“Defense Counsel”** means Shareef S. Farag, Nicholas D. Poper, and Kerri H. Sakaue of Baker & Hostetler LLP.

- 1.17 **“Effective Date”** means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes Final.
- 1.18 **“Fee Award”** means the award of attorneys’ fees, if any, that the Court authorizes to be paid to Class Counsel for the services they rendered to the Class Members, Collective Members, and Aggrieved Employees in the Action. Class Counsel will not seek more than thirty-five percent (35%) of the Gross Settlement Amount as their Fee Award.
- 1.19 **“Final”** means that the Judgment or a court order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the Judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to intervene or other review proceeding of the Judgment or order has been commenced, such appeal, motion or petition to intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petition for rehearing or re-argument, petition for rehearing *en banc*, petition for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the Judgment or order in its entirety. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to the Fee Award, Class Counsel’s Costs Award, or any Service Award shall not by itself delay or preclude the Judgment from becoming a final judgment or delay or preclude the Effective Date of this Agreement.
- 1.20 **“Final Approval”** means the Court’s order granting final approval of the Settlement and entering judgment.
- 1.21 **“Final Approval Hearing”** means the hearing to be held by the Court on the Motion for Final Approval of the Settlement.
- 1.22 **“FLSA”** means the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.*
- 1.23 **“Gross Settlement Amount”** means Three Million Dollars (\$3,000,000.00), the sum of which represents the total and non-reversionary amount payable pursuant to this Settlement by Defendant, including the Fee Award, Class Counsel’s Costs Award, Service Awards, the PAGA Settlement Amount, Administration Costs, and all amounts payable to Participating Individuals. No portion of the Gross Settlement Amount will revert to Defendant for any reason. Under no circumstances will Defendant be required to pay or cause to be paid more than the Gross Settlement Amount in connection with this Settlement, except for the employers’ share of any payroll taxes to be paid in connection with the Settlement and as set forth in Paragraph 7 below.
- 1.24 **“Judgment”** means the judgment entered by the Court upon granting Final Approval.
- 1.25 **“Net Settlement Amount”** means the Gross Settlement Amount less the following payments in the amounts approved by the Court: (a) the Service Awards; (b) the Fee Award; (c) Class Counsels’ Costs Award; (d) Administration Costs; and (e) the PAGA Settlement Amount.

- 1.26 **“Non-Participating Class Members”** means any and all Class Members who opt out of the Settlement’s release of class action claims by timely submitting a valid Request for Exclusion to the Administrator.
- 1.27 **“Operative Complaint”** means the First Amended Complaint attached to this Settlement as **Exhibit A** which includes all claims Plaintiffs have asserted against Defendant in the Action and which the Parties stipulate to filing subject to the terms of this Agreement.
- 1.28 **“Opt-In Plaintiffs”** include Plaintiff Daniela Melgoza, and all additional Collective Members who opt-in to the Action and consent to the terms of the Settlement.
- 1.29 **“PAGA”** means the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698, *et seq.*
- 1.30 **“PAGA Pay Period”** means any pay period during which an Aggrieved Employee worked for Defendant in a non-exempt position in the State of California during the PAGA Period.
- 1.31 **“PAGA Period”** means the period from November 24, 2020 through May 28, 2023.
- 1.32 **“PAGA Settlement Amount”** means the total amount of Seventy-Five Thousand Dollars (\$75,000), which is the portion of the Gross Settlement Amount that the Parties have agreed to allocate to resolution of all claims and remedies under PAGA, subject to Court approval. Pursuant to the PAGA, 75% of the PAGA Settlement Amount (\$56,250) shall be paid to the California Labor and Workforce Development Agency, and 25% of the PAGA Settlement Amount (\$18,750) shall be held for distribution of Settlement Awards to Aggrieved Employees.
- 1.33 **“Participating Class Members”** means any and all Class Members who do not timely submit a valid Request for Exclusion from the class action component of the Settlement.
- 1.34 **“Participating Individuals”** means and includes all Participating Class Members, all Opt-In Plaintiffs, and all Aggrieved Employees.
- 1.35 **“Plaintiffs”** means the named plaintiffs in the Action, Andrea Salonga and Daniela Melgoza.
- 1.36 **“Preliminary Approval”** means the Court’s order preliminarily approving the terms and conditions of this Settlement.
- 1.37 **“Qualified Settlement Fund” or “QSF”** means a qualified settlement fund under Section 468B of the Internal Revenue Code established by the Administrator for the purpose of administering this Settlement.
- 1.38 **“Released Parties”** means Aegis Senior Communities, LLC d/b/a Aegis Living, its past, present and future parent companies, divisions, predecessors, successors, subsidiaries, related or affiliated companies and organizations, joint venturers, and each of their respective past, present, and future shareholders, owners, officers, directors, partners, employees, trustees, agents, attorneys, fiduciaries, contractors, representatives, partners,

joint venturers, benefit plans sponsored or administered by them, insurers, successors and assigns, divisions, units, branches and other persons or entities acting on their behalf.

- 1.39 **“Response Deadline”** means sixty (60) days after the Class Notice is initially mailed to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail written objections to class and collective action components of the Settlement. For Class Members to whom Class Notices are re-mailed after having been returned undeliverable, the Response Deadline shall be extended by an additional 14 days.
- 1.40 **“Service Award”** means the payment, if any, to Plaintiffs for their efforts in bringing and prosecuting this matter. The Service Award will not exceed the following amounts: Ten Thousand Dollars (\$10,000.00) for Plaintiff Andrea Salonga and Ten Thousand Dollars (\$10,000.00) for Plaintiff Daniela Melgoza.
- 1.41 **“Settlement”** means the disposition of the Action effected by this Agreement and the Judgment.
- 1.42 **“Settlement Award”** means the payment that each Participating Individual shall be entitled to receive pursuant to the terms of this Agreement.
- 1.43 **“Workweek”** means any week during which a Class Member was employed by Defendant in a non-exempt position in the State of California during the Class Period, or any week during which a Collective Member was employed by Defendant in a non-exempt position during the Collective Period.

2. RECITALS

- 2.1 On November 24, 2022, Plaintiff Andrea Salonga filed a putative class action against Defendant in the Superior Court of California for the County of Alameda, Case No. 21CV003128, asserting claims under the California Labor Code and the California Business & Professions Code for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal breaks, (4) failure to provide rest breaks, (5) failure to reimburse all necessary business expenses, (6) failure to provide accurate wage statements, (7) failure to pay all wages due upon separation of employment, and (8) violation of California’s unfair competition law. On January 26, 2022, pursuant to the Class Action Fairness Act, Defendant timely removed the lawsuit to United States District Court for the Northern District of California, in Case No. 3-22-cv-00525-LB (“*Salonga I*”).
- 2.2 On February 23, 2022, Plaintiff Andrea Salonga filed a second action against Defendant in the Superior Court of California for the County of Alameda, Case No. 22CV007450, asserting a single cause of action for civil penalties under PAGA based on the alleged violations of Cal. Lab. Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802, as well as alleged violations of Industrial Welfare Commission (“IWC”) Wage Orders (“*Salonga II*”).
- 2.3 On March 18, 2022, Plaintiff Daniela Melgoza filed a putative class and collective action against Defendant in the United States District Court for the Northern District of California,

Case No. 3-22-cv-01756-LB, asserting claims under the California Labor Code, the California Business & Professions Code, and the Fair Labor Standards Act (“FLSA”) for: (1) violations of the FLSA, 29 U.S.C. § 201 *et seq.*; (2) failure to pay for all hours worked in violation of Cal. Lab. Code § 204; (3) failure to pay minimum wage in violation of Cal. Lab. Code §§ 204, 1194, 1197, and 1198; (4) failure to pay overtime wages in violation of Cal. Lab. Code § 510; (5) failure to authorize and permit and/or make available meal and rest periods in violation of Cal. Lab. Code §§ 226.7 and 512; (6) failure to provide timely and accurate itemized wage statements in violation of Cal. Lab. Code § 226; (6) waiting time penalties under Cal. Lab. Code §§ 201 – 203; and (7) unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200 *et seq.* (“*Melgoza I*”).

- 2.4 On May 5, 2022, Plaintiff Daniela Melgoza filed a putative representative action against Defendant, asserting two causes of action for civil penalties under PAGA based on the following alleged violations of Cal. Lab. Code §§ 201-203, 204, 225.5, 226, 226.3, 226.7, 256, 510, 512, 1182.12, 1194, 1197, 1198, and 2802, as well as alleged violations of IWC Wage Orders 4-2001 and 5-2001 (“*Melgoza II*”).
- 2.5 On May 26, 2022, the Court entered an Order consolidating the related *Salonga I* and *Melgoza I* cases under the lowest number, 22-cv-00525-LB. The Court ordered the Plaintiffs to file a consolidated complaint within 28 days and further ordered that the consolidated complaint would become the operative complaint and supersede all previous complaints filed in either of the related actions. Pursuant to that Order, Plaintiffs filed their Consolidated Class Action Complaint in *Salonga I* (Doc. 47).
- 2.6 On July 25, 2022, Plaintiff Daniela Melgoza filed in *Melgoza I* a First Amended Complaint (“FAC”) alleging a single cause of action against Defendant for violation of the FLSA (Doc. 40).
- 2.7 On March 28, 2023, Plaintiffs and Defendant attended a full-day, global mediation on *Salonga I*, *Salonga II*, *Melgoza I*, and *Melgoza II* before reputable employment mediator Steve Rottman, Esq. The Parties did not reach a settlement at the mediation but continued to engage in arms’ length negotiations with the assistance of the mediator.
- 2.8 On March 30, 2023, with the assistance of the mediator, the Parties reached a tentative settlement agreement. The Parties thereafter negotiated the specific terms of the Settlement and have agreed to settle all pending litigation pursuant to the mediator’s proposal and as set forth in this Agreement.
- 2.9 In order to avoid duplication of settlement approval proceedings, the Parties agreed to consolidate the operative complaints in *Salonga I*, *Salonga II*, *Melgoza I*, and *Melgoza II*, for settlement purposes only, by stipulating to filing a First Amended Complaint in *Salonga II* that includes all claims subject to the Settlement.
- 2.10 Class Counsel have made a thorough and independent investigation of the facts and law relating to the allegations in the Action. In agreeing to this Agreement, Plaintiffs have considered: (a) the facts developed during discovery and the Parties’ mediation process and the law applicable thereto; (b) the attendant risks of continued litigation and the

uncertainty of the outcome of the claims alleged against Defendant; and (c) the desirability of consummating the Settlement according to the terms of this Agreement. Plaintiffs have concluded that the terms of the Settlement are fair, reasonable and adequate, and that it is in the best interests of Plaintiffs, the Collective Members, the Class Members, and the Aggrieved Employees to settle their claims against Defendant pursuant to the terms set forth in this Agreement.

- 2.11 Defendant denies all allegations asserted in the Action and denies that it is liable for any claim for alleged damages, penalties, interest, fees, and all other forms of relief. Defendant has agreed to resolve the Action and enter into this Agreement as a compromise and settlement of highly disputed claims. However, to the extent this Agreement is deemed void or the Effective Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class, collective and/or representative action treatment on any grounds, as well as asserting any and all other privileges and potential defenses.
- 2.12 To the extent this Agreement is deemed void or the Effective Date does not occur, Plaintiffs and Class Counsel agree that Defendant retains and reserves these rights stated in the preceding section. To the extent this Agreement is deemed void or the Effective Date does not occur, Plaintiffs and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that based on this Agreement, Defendant cannot contest class certification, collective certification, or representative action treatment on any grounds whatsoever or assert any and all privileges or potential defenses.
- 2.13 The Parties recognize that notice to the Settlement Class of the material terms of this Settlement, as well as Court approval of this Settlement, are required to effectuate the Settlement, and that the Settlement will not become operative until the Court grants Final Approval of the Settlement, the Settlement becomes Final, and the Effective Date occurs.
- 2.14 The Parties stipulate and agree that, for settlement purposes only, the requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b), and class certification pursuant to Cal. Code Civ. Proc. § 382 are met. The Parties agree to the designation of Class Counsel as counsel for the Class Members and Collective Members for settlement purposes only. Should this Settlement not become Final, such stipulation to certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, any issue of whether or not collective or class certification would be appropriate in a non-settlement context. Defendant denies that class, collective or representative action treatment is appropriate outside the settlement context.

3. CONDITIONS PRECEDENT TO EFFECTIVENESS OF SETTLEMENT

- 3.1 Solely for the purpose of facilitating this Settlement of the Action on a consolidated basis, in a single action pending in one court, the Parties stipulate to the filing of the First Amended Complaint in *Salonga II*, which shall be filed promptly after execution of this Settlement Agreement and is attached hereto as Exhibit A. The Parties agree that Defendant is not required to file a response to the First Amended Complaint and maintains

all available defenses to the allegations in the First Amended Complaint. The Parties stipulate and agree that for settlement purposes only, Defendant consents to the filing of the First Amended Complaint in *Salonga II* and to personal and subject matter jurisdiction in Alameda County Superior Court.

3.2 If the Court denies Final Approval of the Settlement, or if Defendant voids the Settlement pursuant to Paragraph 8 of this Agreement, or if the Settlement does not become effective for any reason, the following will occur:

3.2.1 The Parties' stipulation to the filing of the First Amended Complaint will be deemed revoked as of the date the Court denies Final Approval, or as of the date that Defendant voids the Settlement, or if the Settlement does not become effective for any other reason, then as of the date such reason occurs, the First Amended Complaint will be deemed stricken and the original Complaint in *Salonga II* will be the operative complaint in that action;

3.2.2 The status of *Salonga I*, *Salonga II*, *Melgoza I*, and *Melgoza II* will be deemed to return to their status at the time immediately prior to the Parties' execution of this Agreement, as if the Parties had never executed this Agreement and as if the First Amended Complaint had never been filed. Upon such occurrence, the period between the execution of this Agreement and the Court's denial of Final Approval will be treated as a full stay on all proceedings for purposes of calculating all required filing and trial deadlines; and

3.2.3 To the extent required by any court or otherwise necessary, the Parties will take all necessary steps to give effect to Paragraph 3.2.

4. RELEASES. Upon the Effective Date, and except as to such rights or claims as may be created by this Agreement, Plaintiffs and all Participating Individuals shall be deemed to have, and by operation of the Judgment shall have, released and discharged finally, forever and with prejudice claims against Released Parties as follows:

4.1 **Claims Released by Plaintiffs.** Plaintiffs and their respective spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties, in exchange for consideration provided in this Agreement, from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to all facts, transactions, and occurrences – known or unknown – as of the date they execute this Agreement, including, but not limited to, all Released FLSA Claims, Released Class Claims, and Released PAGA Claims, as defined in Paragraphs 4.2 through 4.4 below ("Plaintiffs' Release"). Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or to claims or actions based on occurrences after they execute this Agreement. Each Plaintiff acknowledges she may discover facts or law different from, or in addition to, the facts or law that he or she now knows or believes to be true but agrees, nonetheless,

that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts, or their discovery thereof.

For purposes of Plaintiffs' Release only, each Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

- 4.2 **Claims Released by Opt-In Plaintiffs.** All Opt-In Plaintiffs shall release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses under the FLSA during the Collective Period, which are based on or arising from the factual predicates that were alleged, or reasonably could have been alleged, in the Operative Complaint ("Released FLSA Claims").
- 4.3 **Claims Released by Participating Class Members.** All Participating Class Members shall release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses based on or arising from factual predicates alleged, or reasonably could have been alleged, in the Operative Complaint, including, but not limited to: (a) any alleged failure to pay all wages due including minimum wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California, any required payroll or employee records; (e) any alleged failure to provide compliant wage statements; (f) any alleged failure to reimburse business expenses; (g) any right or claim for civil penalties pursuant to the California Labor Code, the California Industrial Welfare Commission Wage Orders, the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) based on the foregoing alleged claims; (h) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 *et seq.* based on the foregoing alleged claims; and (i) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or could have reasonably been alleged, in the Operative Complaint and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority, during the Class Period ("Released Class Claims"). Except as set forth in Paragraphs 4.2 and 4.4, and if applicable, Paragraph 4.5, of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment

insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 4.4 **Claims Released by Aggrieved Employees.** All Aggrieved Employees shall release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all individual and representative claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the Action based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including, but not limited to, any right or claim for PAGA penalties predicated on alleged nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods, nonpayment or under-payment of premiums for meal or rest period violations, failure to timely pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure to provide and/or maintain accurate and itemized wage statements, failure to reimburse business expenses, and any claims for PAGA civil penalties based on the foregoing alleged claims under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, including any alleged violations of the California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, during the PAGA Period ("Released PAGA Claims"). The Parties agree that there shall be no right for any Aggrieved Employee to opt out or otherwise exclude himself or herself from the PAGA component of the Settlement.
- 4.5 **FLSA Release by Participating Class Members Who Are Not Opt-In Plaintiffs.** All Participating Class Members who are not Opt-In Plaintiffs and who cash, deposit, or otherwise negotiate their Settlement Award checks shall also release the Released FLSA Claims against Released Parties as set forth in Paragraph 4.2 above. Participating Class Members who are not Opt-In Plaintiffs and who do not cash or deposit their Settlement Award checks, shall not release the Released FLSA Claims against Released Parties as set forth in Paragraph 4.2 above.
- 4.6 **Release Language on Settlement Checks.** The Administrator shall include the following release language on the back of each Settlement Award check, as appropriate for (a) Opt-in Plaintiffs, (b) Participating Class Members, and (c) Aggrieved Employees:
- 4.6.1 For Opt-In Plaintiffs: "This check is your settlement payment in connection with the court-approved class action Settlement in *Andrea Salonga, et al. v. Aegis Senior Communities, LLC d/b/a Aegis Living*, Superior Court of California, County of Alameda, Case No. 22CV007450. By opting in to the collective portion of this Action, you have acknowledged that you have read the Collective Notice, that you consented to join the Action and participate in the Settlement and that you have released the Released FLSA Claims against Released Parties."
- 4.6.2 For Participating Class Members: "This check is your settlement payment in connection with the court-approved class action Settlement in *Andrea Salonga, et al. v. Aegis Senior Communities, LLC d/b/a Aegis Living*, Superior Court of

California, County of Alameda, Case No. 22CV007450. By not opting out of the Settlement, you have released Aegis Senior Communities, LLC and other Released Parties of all Released Class Claims as defined in the Agreement. By depositing or cashing your check, you acknowledge that you have read the Class Notice, that you consent to join the Action, and that you are releasing the Released FLSA Claims against Released Parties.”

- 4.6.3 For Aggrieved Employees Who Are Not Participating Class Members Nor Opt-in Plaintiffs: “This check is your settlement payment in connection with the court-approved PAGA Settlement in *Andrea Salonga, et al. v. Aegis Senior Communities, LLC d/b/a Aegis Living*, Superior Court of California, County of Alameda, Case No. 22CV007450.

5. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a Motion for Preliminary Approval of the Settlement upon full execution of this agreement, as set forth below:

- 5.1.1 **Request for Class Certification and Preliminary Approval Order.** Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (a) a draft of the Notice of Motion and Memorandum in Support of the Motion for Preliminary Approval of the Settlement, requesting that the Court certify a class, for the sole purpose of settlement, pursuant to 29 U.S.C. § 216 and Cal. Code Civ. Proc. § 382, and approval of the PAGA Settlement under Labor Code § 2699(f)(2); (b) a draft proposed Order Granting Preliminary Approval of the Settlement; (c) a draft proposed Class Notice; (d) a draft proposed Collective Notice; (e) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve as the Administrator, competency, operative procedures for protecting the security of Class Data, amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance, all facts relevant to any actual or potential conflicts of interest with Class Members or Collective Members, and the nature and extent of any financial relationship with Plaintiffs, Class Counsel, or Defense Counsel; (f) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members, its timely transmission to the LWDA of all necessary PAGA documents, including Plaintiffs’ PAGA Notices, the Operative Complaint, and this Agreement; and (g) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator.
- 5.1.2 **Duty to Cooperate.** If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by

meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

6. SETTLEMENT ADMINISTRATION

- 6.1 **Selection of Administrator.** The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 6.2 **Employer Identification Number.** The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 6.3 **Qualified Settlement Fund.** The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under US Treasury Regulation section 468B-1.
- 6.4 **Transmission of Class List to the Administrator.** Within ten (10) business days after the Preliminary Approval of the Settlement, Defendant shall provide the Class List to the Administrator and to Class Counsel. Class Counsel agree that they shall use the information contained in the Class List only for the purpose of assisting with the administration of the Settlement, including fielding questions from Class Members. Class Counsel shall provide the Administrator with updated addresses or contact information for Opt-In Plaintiffs in their possession.
- 6.5 **Notice to Class and Collective Members.** The Administrator shall be responsible for preparing, printing and mailing the Class Notice and the Collective Notice, in English, Spanish, Tagalog, and Mandarin as set forth below:
- 6.5.1 **Settlement Website and Call Center.** The Administrator will create a website for the Settlement, which will allow Class Members to view the Class and Collective Notices (in generic form), this Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of the Agreement. Additionally, the Settlement website will provide the contact information for Class Counsel and for the Administrator. The website will also allow Collective Members to submit their Opt-In Consent Forms electronically. The Administrator will provide Class Counsel and Defense Counsel with a preview of the proposed website. Class Counsel and Defense Counsel must approve the website before it goes live and also must approve any modifications to the website. The Administrator shall also create a toll-free call center to field telephone inquiries from Class Members and Collective Members during the notice and settlement administration periods. The

Administrator will be directed to take the website and call center down after the 180-day check cashing period for Settlement Award checks.

- 6.5.2 Mailing of Class Notice. In order to provide the best notice practicable, prior to mailing the Class and Collective Notices, the Administrator will take reasonable efforts to identify current addresses using the National Change of Address database within five (5) business days after receiving the Class List. Within ten (10) business days after taking such efforts to identify current addresses, the Administrator shall mail, via first-class United States Postal Service (“USPS”) mail, the Class Notice approved by the Court to Class Members and Aggrieved Employees and the Collective Notice approved by the Court to all Collective Members who are not Class Members. The Administrator shall provide notice to Class Counsel and Defense Counsel that the Class Notice and Collective Notice have been mailed.
- 6.5.3 Returned Notice. Any Class Notice or Collective Notice returned to the Administrator with a forwarding address shall be re-mailed within three (3) business days following receipt of the returned mail. If no forwarding address is provided, the Administrator shall promptly attempt to determine a correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Class Member or Collective Member involved and shall re-mail the Class or Collective Notice.
- 6.5.4 Administrator’s Report After Response Deadline. Within ten (10) business days after the Response Deadline, the Administrator shall provide Defense Counsel and Class Counsel, respectively, a report showing: (i) the names of Class Members; (ii) the names of Opt-In Plaintiffs who are not also Participating Class Members; (iii) the Settlement Awards to be paid to each such Participating Class Member and each such Opt-In Plaintiff who is not also a Participating Class Member; (iv) the final number of Class Members who have submitted objections or valid Requests for Exclusion from the class action component of the Settlement; (v) the final number of Collective Members who have submitted valid Opt-In Consent Forms; and (vi) the number of undeliverable Class Notices and Collective Notices.
- 6.6 **No Retaliation or Encouragement.** Defendant will not take any adverse action against any current or former employee on the grounds that he/she is eligible to participate and/or does participate in the Settlement. The Parties, Class Counsel, and Defense Counsel will not discourage participation in the Settlement or encourage objections or opt-outs.
- 6.7 **Disputes Regarding Workweeks.** To the extent that any Class Member disputes the number of workweeks that the Class Member worked, as shown in his or her Class Notice, such Class Member may produce evidence to the Administrator evidencing the dates they contend to have worked for Defendant. The deadline for Class Members to submit disputes pursuant to this paragraph shall be the Response Deadline (and disputes postmarked by the Response Deadline shall be considered to have met the deadline). Unless the Class Member presents convincing evidence showing he or she worked other workweeks than shown by

Defendant's records, his/her Settlement Award will be determined based on Defendant's records. The Administrator shall notify counsel for the Parties of any disputes it receives. Defendant shall review their records and provide further information to the Administrator, as necessary. The Administrator shall provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, it shall be decided by the Administrator.

- 6.8 **Objection to Class Action Settlement by Participating Class Members.** Participating Class Members will have up to and including the Response Deadline to object to the class action component of the Settlement. Non-Participating Class Members shall not be entitled to object to the class action component of the Settlement. To object, a Participating Class Member must mail to the Administrator a written objection stating the basis for the objection and include any supporting documents. The postmark date shall be deemed the exclusive means for determining if the objection is timely. The Administrator shall provide counsel for the Parties with complete copies of all objections received, including the postmark dates for each objection, within two (2) business days of receipt. Class Counsel shall file the objections with the Court in connection with the motion for Final Approval. The Parties and their counsel agree that neither they, nor any person on their behalf, will solicit, encourage, or advise any individual to object to the Settlement. The Class Notice shall advise Participating Class Members of the right to object and state the following requirements for objections: (1) the objection must be mailed to the Administrator no later than the Response Deadline, the date of which shall be stated in the Class Notice; (2) the objection shall state the full name, address, telephone number, and employee ID of the Participating Class Member; (3) it shall state the factual and legal basis for the objection and include any supporting documents, and (4) it shall be signed personally by the Participating Class Member. The Class Notice shall state that if the Participating Class Member wishes to be represented by an attorney with respect to the objection, it will be at his or her own expense. The Class Notice shall also state that Class Members may appear at the Final Approval Hearing and that for administrative purposes the objection should state if the Class Member or his or her attorney intends to appear at the Final Approval Hearing. The Class Notice shall state that objections shall only be considered if the Class Member has not opted out of the class action component of the Settlement. Participating Class Members who fail to make timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness, and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, unless otherwise excused by the Court upon a showing of good cause.

- 6.9 **Requests for Exclusion from Class Action Settlement.** The Class Notice shall provide that Class Members, other than Plaintiffs, who wish to exclude themselves from the class action component of the Settlement ("opt out") must mail to the Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written Request for Exclusion must contain the Class Member's full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No Request for Exclusion may be made on behalf of a group of Class Members. Requests for Exclusion must be postmarked by the Response Deadline. None of the Parties, their counsel, nor any person

on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the Settlement.

- 6.10 **Cure Period.** In the event any request for exclusion is timely submitted but does not contain sufficient information to be valid, the Administrator shall provide the Class Member, within seven (7) days of receipt of such request for exclusion, a letter requesting the information that was not provided and giving the Class Member fourteen (14) days from the mailing of such cure letter to respond. Any invalid submission that is not timely cured will be considered a nullity.
- 6.11 **Opt-Ins by Collective Members.** The Collective Notice shall provide that Collective Members may “opt in” to the Collective portion of this Settlement by submitting a completed Opt-In Consent Form, which will be included in the Collective Notice. To be valid, the Opt-In Consent Form must: (1) include the Collective Member’s full name, (2) be personally signed by the Collective Member, and (3) be returned to the Administrator by the Response Deadline. Opt-In Consent Forms may be completed and signed electronically. Individuals who are not Collective Members may not submit valid Opt-In Consent Forms. The Administrator shall provide Class Counsel and Defense Counsel with all valid Opt-In Consent Forms no later than seven (7) days following the Response Deadline. Class Counsel shall file the valid Opt-In Consent Forms with the Court in connection with the motion for Final Approval, and Defendant shall not oppose the filing of these Opt-In Consent Forms. No Opt-In Consent Form may be made on behalf of a group of Collective Members. Opt-In Consent Forms must be postmarked by the Response Deadline. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to opt in or opt out from the collective portion of the Settlement.
- 6.12 **Administrator’s Declaration.** No later than fourteen (14) days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class and Collective Notice, the Class Notices and Collective Notices returned as undeliverable, the re-mailing of Class Notices and Collective Notices, attempts to locate Class Members or Collective Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid) from Class Members, the number of written objections received from Class Members, and attach a list of the names and other identifying information of Class Members who have submitted timely and valid Requests for Exclusion (“Exclusion List”). The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 6.13 **Final Report by the Administrator.** Within ten (10) days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator shall provide written certification of such completion to counsel for all Parties and the Court. This written certification shall include the total number of Participating Class Members, the total number of Collective Members who are not also Participating Class Members, the average

recovery per Participating Class Member, the average recovery per Collective Member who is not also a Participating Class Member and for whom the Administrator was able to obtain a verified address, the median recovery per Participating Class Member, the median recovery per Collective Member who is not also a Participating Class Member for whom the Administrator was able to obtain a verified address, the largest and smallest amounts paid to Participating Class Members, the largest and smallest amounts paid to Collective Members who are not also Participating Class Members, and the number and value of checks not cashed.

7. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE. Based on its records, Defendant estimates that, as of the date of mediation, (1) there are approximately 4,129 Class Members and 272,108 Workweeks during the Class Period; and (2) there are 1,911 Aggrieved Employees who worked 55,620 Pay Periods during the PAGA Period. Plaintiffs are entering into this Settlement Agreement based on such representations. If the number of Workweeks in the Class Period exceeds 272,108 by more than 10% (which is 299,318 Workweeks), the Parties shall confer and Defendant, may at its option, either: (a) increase the Gross Settlement Amount on a pro-rata basis equal to \$10.55 per Workweek in excess of 10% (e.g., if the number of Workweeks increases by 12%, Defendant may increase the Gross Settlement Amount by \$57,423), or (b) set an end date to the Class Period which results in the number of Workweeks worked by the Class Members increasing by 10% or less.

8. DEFENDANT'S RIGHT TO WITHDRAW If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total number of Class Members, Defendant may, within its sole discretion, elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be null and void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, that Defendant remain responsible for paying all Settlement Administration Expenses actually incurred up to that time. Defendant must notify Class Counsel and the Court of its election to withdraw no later than seven (7) business days after the Administrator sends the final Exclusion List to Defense Counsel.

9. MOTION FOR FINAL APPROVAL.

9.1 Plaintiffs' Responsibilities. Plaintiffs and Class Counsel will be responsible for drafting the Motion for Final Approval of the Settlement, and approval of the requested Service Awards, Fee Award, Class Counsel's Costs Award, and Administration Costs to be heard at the Final Approval Hearing. Class Counsel shall provide Defense Counsel a copy of a draft Unopposed Motion for Final Approval of the Settlement at least five (5) days in advance of filing it with the Court. Plaintiffs shall reserve with the Court a date for the Final Approval Hearing no earlier than thirty (30) days after the Response Deadline to consider final approval of the Settlement and entry of a Final Approval Order (a) certifying this Action as an FLSA collective action under 29 U.S.C. § 216(b) and as a class action under Cal. Code Civ. Proc. § 382 for purposes of settlement only; (b) finding dissemination of the Class Notice and Collective Notice was accomplished as directed and met the requirements of due process; (c) approving the Settlement as final and its terms as fair, reasonable and adequate; (d) approving the payment of the Service Awards to Plaintiffs; (e) approving Class Counsel's application for an award of attorneys' fees and

reimbursement of out-of-pocket litigation costs and expenses; (f) directing that the Settlement funds be distributed in accordance with the terms of this Agreement; (g) directing that the Action be dismissed finally, fully, forever and with prejudice and, with respect to each Participating Individual, in full and final discharge of any and all Participating Individuals' Released Claims; and (h) retaining continuing jurisdiction over this Action for purposes only of overseeing all settlement administration matters.

- 9.2 **Response to Objections.** Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 9.3 **Duty to Cooperate.** If the Court does not grant Final Approval or conditions Final Approval on any material modification to the Settlement (including, but not limited to, the scope of release by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Service Awards, Class Counsel's Fee Award, Class Counsel's Cost Award, and/or Administration Costs shall not constitute a material modification to the Agreement within the meaning of this Paragraph.
- 9.4 **Continuing Jurisdiction of the Court.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes of (a) enforcing this Agreement and/or the Judgment, (b) addressing settlement administration matters, and (c) addressing such post-Judgment matters as permitted by law.
- 9.5 **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Fee Award and Class Counsel's Cost Award set forth in this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 9.6 **Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.** If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the reviewing Court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Service Awards or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

10. SETTLEMENT FUNDS AND AWARD CALCULATION

- 10.1 Funding of Settlement.** Within ten (10) business days after the preliminary approval order, Defendant shall deposit the total Gross Settlement Amount into an interest-bearing Qualified Settlement Fund (“QSF”) established by the Administrator. If the Court denies final approval of the Settlement with prejudice, the Gross Settlement Amount and any interest accrued thereon shall be returned by the Administrator to Defendant. Defendant shall not otherwise have access to the Gross Settlement Amount, or to any earned interest, once those funds are deposited into the interest-bearing settlement fund, except by joint agreement of the parties or by order of the Court. The Parties agree that the QSF (a) shall be established pursuant to an order of the Court prior to the receipt of any monies from Defendant; (b) that it shall be established to resolve and satisfy the contested claims that have resulted, or may result, from the matters that are the subject of this litigation and that are released by this Settlement; and (c) that the QSF that is established and its assets are segregated and shall be segregated (within a separately established fund or account) from the assets of Defendant and all related other persons. The Administrator shall be responsible for establishing, administering, and otherwise operating the QSF, including the preparation and filing of federal, state, and local tax returns. All disbursements shall be made from the Qualified Settlement Fund. The Administrator shall be the only entity authorized to make withdrawals or payments from the Qualified Settlement Fund.
- 10.2 Interest Gained on Gross Settlement Amount.** Upon the Court’s issuance of an order granting final approval of the Settlement and of the Administrator, any interest gained on the Gross Settlement Amount in the QSF shall be deemed part of the Gross Settlement Amount.
- 10.3 Payments from the Gross Settlement Amount.** Subject to the Court’s Final Approval Order and the occurrence of the Effective Date, the following amounts shall be paid by the Administrator from the Gross Settlement Amount:
- 10.3.1 Service Awards to Plaintiffs.** Subject to the Court’s approval, Payment of the Service Awards shall be made within ten (10) days after the Effective Date or as soon as reasonably practicable thereafter. The Qualified Settlement Fund shall issue an IRS Form 1099 for these payments. If the Court approves a Service Award in an amount less than requested, the reduction in the Service Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Award in any way delay or preclude the Judgment from becoming Final or delay or preclude the Effective Date. Plaintiffs assume full responsibility for paying all taxes, if any, due as a result of the Service Awards and agree to respectively indemnify Defendant for any such taxes owed by them related to the Service Awards.
- 10.3.2 Fee Awards and Class Counsel’s Costs Awards.**
- 10.3.2.1** Subject to the Court’s approval, the Fee Award and Class Counsel’s Costs Award shall be made within ten (10) days after the Effective Date or as soon as reasonably practicable thereafter.

10.3.2.2 The approved Fee Award and Class Counsels' Costs, even if less than what Class Counsel request, shall constitute full satisfaction of Defendant's obligations to pay amounts to any person, attorney or law firm for attorneys' fees or costs in this Action on behalf of Plaintiffs and/or any other Class Member, and shall relieve Defendant from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of Plaintiffs or any other Class Member. If the Court approves a Fee Award and/or Class Counsel's Costs Award in an amount less than what Class Counsel request, the reduction in the Fee Award and/or Class Counsels' Costs Award shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Fee Award and/or Class Counsels' Costs Award in any way delay or preclude the Judgment from becoming a Final or delay or preclude the Effective Date.

10.3.2.3 An IRS Form 1099 shall be provided to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

10.3.3 Payment to the Labor and Workforce Development Agency. Subject to Court approval, the Parties agree that the PAGA Settlement Amount will be paid from the Gross Settlement Amount in settlement of all individual and representative claims brought in the Action by or on behalf of Plaintiffs and Aggrieved Employees under PAGA. Pursuant to PAGA, Seventy-Five Percent (75%) of this sum, or \$56,250, will be paid to the LWDA and Twenty-Five Percent (25%), or \$18,750, will be allocated as the "Net PAGA Amount." The LWDA Payment shall be made within ten (10) days after the Effective Date or as soon as reasonably practicable.

10.3.4 Settlement Administration Costs. Settlement Administration costs shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

10.3.5 Settlement Awards to Participating Individuals. Settlement Awards shall be made to Participating Individuals as follows:

10.3.5.1 *Settlement Award Eligibility.* All Participating Class Members, Aggrieved Employees, and Opt-In Plaintiffs who are not also Participating Class Members shall be mailed a check in the amount of their Settlement Award from the Net Settlement Amount. If a Participating Class Member was employed by Defendant outside the State of California at any time during the Collective Period, such individual will receive one check, combining their award as a Participating Class Member relating to his period of qualifying employment in the State of California and as a Collective Member

relating to his or her period of qualifying employment outside the State of California.

- 10.3.5.2 *Settlement Award Calculations.* The Administrator shall be responsible for determining the amount of the Settlement Award to be paid to each Participating Class Member, Aggrieved Employee, and Opt-In Plaintiff who is not also a Participating Class Member and for whom the Administrator was able to obtain a verified address based on the formulas below:
- 10.3.5.3 The Settlement Awards of Participating Class Members, Aggrieved Employees, and Opt-In Plaintiffs shall be a *pro rata* portion of the Net Settlement Amount as follows:
- 10.3.5.4 When calculating the estimated individual Settlement Awards for purposes of the Class Notice and Collective Notice, the Administrator will assume that no Class Members opt out, and that all Collective Members and all Class Members cash their Settlement Award checks. When calculating the individual Settlement Awards to Class Members following the Final Approval Date (for purposes of preparing individual Settlement Award checks), the Administrator will not include Non-Participating Class Members. When calculating the individual Settlement Awards to Opt-In Plaintiffs following the Final Approval Date (for purposes of preparing individual Settlement Award checks), the Administrator will not include Collective Members who failed to submit a valid Opt-In Consent Form.
- 10.3.5.5 For each Workweek during which a Participating Class Member was employed by Defendant during the Class Period, and for each Workweek during which a Collective Member was employed by Defendant at any time during the Collective Period, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of Workweeks he or she was employed during such period. Each workweek during which the individual was employed outside the State of California during the relevant time period will be equal to one (1) settlement share. To reflect the increased value of claims under California law, workweeks during which a Participating Class Member was employed in California will instead be equal to three (3) settlement shares.
- 10.3.5.6 The total number of settlement shares for all Participating Class Members and Opt-In Plaintiffs will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating Class Member's or Opt-In Plaintiff's number of settlement shares to determine his or her *pro rata* portion of the Net Settlement Amount.

- 10.3.6 The Net PAGA Amount shall be distributed as follows: Each Aggrieved Employee shall be eligible to receive a *pro rata* portion of the Net PAGA Amount based on his or her PAGA Pay Periods during which he or she was employed by Defendant in non-exempt positions in California during the PAGA Period. The resulting Net PAGA Amount per Aggrieved Employee, if any, will be added to that Aggrieved Employee's Settlement Award.
- 10.4 In addition to other information contained on the Class Notice, the Class Notice shall state the estimated minimum payment the class member is expected to receive assuming full participation of all Class Members.
- 10.5 All Settlement Award determinations shall be based on Defendant's timekeeping, payroll, and/or other records. If the Parties determine, based upon further review of available data, that a person previously identified as being a Class Member is not a Class Member, or an individual who was not previously identified as a Class Member is in fact a Class Member but was not so included, the Administrator shall promptly make such addition or deletion as appropriate.
- 10.6 Settlement Award Allocations. Any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy-five percent (75%) of each Settlement Award shall be allocated as penalties, and five percent (5%) of each Settlement Award shall be allocated as expense reimbursements. Settlement Awards will be paid out to Participating Class Members, Collective Members, and Aggrieved Employees subject to reduction for their share of withholdings and taxes associated with the wage-portion of the Settlement Awards. The wage-portion of a Settlement Award, if any, will be reported on an IRS Form W-2. Portions of the Settlement Awards that are allocated to penalties and expense reimbursements will be reported on an IRS Form 1099. The employer's share of all required FICA and FUTA taxes on the wage portions of the Settlement Awards shall be withheld from the Settlement Awards.
- 10.7 The Administrator shall calculate the employer share of taxes and provide Class Counsel and Defense Counsel Defendant's total employer tax contributions within five (5) business days after the final Settlement Award calculations are approved. Defendant shall pay the employer's share of all required FICA and FUTA taxes on the wage portions of the Settlement Awards. Amounts to be withheld will be remitted by Defendant to the appropriate governmental authorities.
- 10.8 The Administrator will not make any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments except to the extent clearly required by law, or charity withholdings, from or with respect to the payments to Participating Class Members, Collective Members, and Aggrieved Employees, and entry of the Final Approval Order by the Court shall be deemed authority not to make any such deductions, withholdings, or additional payments.

- 10.9 Class Counsel and Defense Counsel do not intend this Agreement to constitute legal advice relating to the tax liability of any Class Member. To the extent that this Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.
- 10.10 The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Class Members are not relying on any statement or representation by the Parties in this regard. Plaintiffs and Class Members understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the payments to them described herein and as to those portions of the Settlement Payments reported as non-wage income, agree to pay any taxes due or owing by them with respect to such payment.
- 10.11 The Administrator shall provide Class Counsel and Defense Counsel with a final report of all Settlement Awards, at least five (5) business days before the Settlement Awards to Participating Class Members, Collective Members, and Aggrieved Employees are mailed.
- 10.12 The Administrator shall mail all Settlement Awards to Participating Class Members, Opt-In Plaintiffs who are not also Participating Class Members and for whom the Administrator was able to obtain a verified address, and Aggrieved Employees within ten (10) days after the Effective Date or as soon as reasonably practicable thereafter. The Administrator shall then provide written certification of mailing to Class Counsel and Defense Counsel.
- 10.13 All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and may thereafter automatically be canceled if not cashed within that time, at which time the right to recover any Settlement Award will be deemed void and of no further force and effect. With ninety (90) days remaining, a reminder letter will be sent via U.S. mail and, if applicable, email to those who have not yet cashed their settlement check. Regardless of whether they cash their Settlement Award Checks, Plaintiffs, Aggrieved Employees, Opt-In Plaintiffs, and Participating Class Members shall be deemed to have finally and forever released Plaintiffs' Released Claims, Released PAGA Claims, Released FLSA Claims, and Released Class Claims, respectively.
- 10.14 **Remaining Monies.** If at the conclusion of the 180-day check cashing period set forth above, any funds remain from checks that are returned as undeliverable or are not negotiated, those monies shall be tendered to the State of California Controller's Office, Unclaimed Property Fund, in the name of the Participating Individual until such time as he or she claims his or her property, as allowed by law, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b).
- 10.14.1 Within twenty-one (21) days after the distribution of any remaining monies to Participating Individuals who were sent and cashed their Settlement Award check or to the California Controller's Unclaimed Property Fund, Plaintiffs will file a Post-Distribution Accounting. The Post-Distribution Accounting will set forth the total settlement fund, the total number of Class Members, the total number of Class Members to whom Class Notice was sent and not returned as undeliverable,

the number and percentage of valid Requests for Exclusion, the number and percentage of objections, the average and median recovery per Participating Individual, the largest and smallest amounts paid to Participating Individuals, the method(s) of notice and the method(s) of payment to Participating Individuals, the number and value of checks not cashed, the amounts distributed to the California Controller's Unclaimed Property Fund (if applicable), the administrative costs, the attorneys' fees and costs, and the attorneys' fees in terms of percentage of the settlement fund.

11. MISCELLANEOUS PROVISIONS

- 11.1 **Submissions to the LWDA.** At the same time as they submit this Class Action Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(1)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(1)(3).
- 11.2 **Dismissal of Other Lawsuits.** Within five (5) business days following the Effective Date, Class Counsel shall take all necessary steps to effectuate the dismissal of all pending lawsuits subject to this Settlement in their entirety with prejudice as to all Released Parties.
- 11.3 **No Admission of Liability.** This Agreement and all related documents are not and shall not be construed as an admission by Defendant or any of the Released Parties of any fault or liability or wrongdoing.
- 11.4 **Publicity.** The Parties and their Counsel agree that they will not publicize this case and/or the fact, amount or terms of the Settlement, or the names of Defendant associated with the claims in the Complaint/this Settlement, through any mass media, including any social media, websites, or the press (press releases, contact with a member of the press, or press conferences), except as provided for by the Agreement for purposes of effectuating notice required by this Agreement, which shall include the provision of notice to Class Members by mail, and which shall include a settlement website to be established and maintained by the settlement administrator as approved by the Court. If the Parties are contacted by the press about the Settlement, they will respond only that the case has been resolved. Nothing in this paragraph shall prevent Class Counsel from communicating with the Class Members, the LWDA, or the court in which the Action is pending, as may be required in response to inquiries about the terms of this Settlement and/or to fulfill their ethical responsibilities under the Settlement and to their respective clients. Nothing in this paragraph shall prevent Class Counsel from identifying this case for purposes of establishing adequacy in other cases.
- 11.5 **Defendant's Legal Fees.** Defendant's legal fees and expenses in this Action shall be borne by Defendant.
- 11.7 **Cooperation.** The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited

to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set forth herein.

- 11.8 **Nullification of the Agreement.** In the event: (a) the Court does not preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to engage in follow up negotiations with the intent of resolving the Court's concerns that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then either Party may void this Agreement; at that point, the Parties agree that each shall return to their respective positions on the day before this Agreement, that this Agreement shall not be used in evidence or argument in any other aspect of their litigation, and that the Administration Costs incurred to that date shall be split evenly between Plaintiffs, on the one hand, and Defendant, on the other.
- 11.9 **Reduced Service Awards, Fee Award, or Class Counsels' Costs Not a Basis for Voiding Settlement.** If the Court approves Service Awards, a Fee Award, and/or Class Counsels' Costs Award in amounts less than what Plaintiffs and/or Class Counsel request, the Parties agree that the reduction in the Service Award(s), Fee Awards, and/or Class Counsels' Costs Award will not be a basis for nullification of this Settlement. Nor will a reduction in the Service Awards, Fee Award, or Class Counsels' Cost Award in any way delay or preclude the judgment from becoming Final or the Settlement from becoming effective.
- 11.10 **Inadmissibility of Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including, without limitation, evidence of a presumption, concession, indication or admission by any of the Parties of any liability, fault, wrongdoing, omission, concession or damage.
- 11.11 **Other Claims.** Plaintiffs are not currently aware of any claims by themselves that are not covered by the Class Members' Released Claims.
- 11.12 **Computation of Time.** For purposes of this Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday, such time period shall be continued to the following business day. The term "days" shall mean calendar days unless otherwise noted.
- 11.13 **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement.

Further, without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

- 11.14 **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.
- 11.15 **Entire Agreement.** This Agreement with exhibits constitutes the entire Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they have not relied on any promise, representation or warranty, express or implied, not contained in this Agreement. No rights hereunder may be waived except in writing.
- 11.16 **Authorization to Enter into Agreement.** The Parties warrant and represent that they are authorized to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect the implementation of the Agreement. In the event that the Parties are unable to reach resolution on the form or content of any document needed to implement this Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance of the mediator, Steve Rottman, Esq., to resolve such disagreement.
- 11.17 **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of Named Plaintiff, Defendant, Opt-In Plaintiffs, the Class Members and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize. The Parties hereto represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.
- 11.18 **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.
- 11.19 **No Signature Required by Class Members.** Only Plaintiffs will be required to execute this Agreement. The Class Notice and Collective Notice, taken together, will advise all Class Members, Collective Members, and Aggrieved Employees of the binding nature of

the releases of claims set forth herein and such shall have the same force and effect as if this Agreement were executed by each Participating Individual.

- 11.20 **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.
- 11.21 **Governing Law.** All terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.
- 11.22 **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for this purpose.

* * * SIGNATURES ON NEXT PAGE * * *

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: 
Daniela Melgoza

Date: 08 / 16 / 2023

Plaintiff: _____
Andrea Salonga

Date: _____

Approved as to Form by Class Counsel:

SCHNEIDER WALLACE COTTRELL KONECKY LLP


By: _____
Carolyn Hunt Cottrell
David C. Leimbach
Michelle S. Lim

Date: 8/16/2023

AEGIS LAW FIRM, APC

By: _____
Kashif Haque
Fawn F. Bekam

Date: _____

Defendant:

AEGIS SENIOR COMMUNITIES, LLC d/b/a AEGIS LIVING

By: _____
Dwayne J. Clark, Founder, CEO & Chairman

Date: _____

Approved as to Form by Defense Counsel:

BAKER & HOSTETLER LLP

By: _____
Shareef S. Farag
Nicholas D. Poper
Kerri H. Sakaue

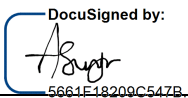
Date: _____

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: _____

Daniela Melgoza

Date: _____

Plaintiff:  _____
Andrea Salonga

8/11/2023 | 9:18 PM PDT

Date: _____

Approved as to Form by Class Counsel:

SCHNEIDER WALLACE COTTRELL KONECKY LLP

By: _____

Carolyn Hunt Cottrell
David C. Leimbach
Michelle S. Lim

Date: _____

AEGIS LAW FIRM, PC

By:  _____
Kashif Haque
Fawn F. Bekam

Date: August 22, 2023

Defendant:

AEGIS SENIOR COMMUNITIES, LLC d/b/a AEGIS LIVING

By: _____

Dwayne J. Clark, Founder, CEO & Chairman

Date: _____

Approved as to Form by Defense Counsel:

BAKER & HOSTETLER LLP

By: _____

Shareef S. Farag
Nicholas D. Poper
Kerri H. Sakaue

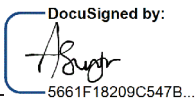
Date: _____

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: _____

Daniela Melgoza

Date: _____

Plaintiff:  _____
Andrea Salonga

8/11/2023 | 9:18 PM PDT

Date: _____

Approved as to Form by Class Counsel:

SCHNEIDER WALLACE COTTRELL KONECKY LLP

By: _____

Carolyn Hunt Cottrell
David C. Leimbach
Michelle S. Lim

Date: _____

AEGIS LAW FIRM, PC

By:  _____
Kashif Haque
Fawn F. Bekam

Date: August 22, 2023

Defendant:

AEGIS SENIOR COMMUNITIES, LLC d/b/a AEGIS LIVING

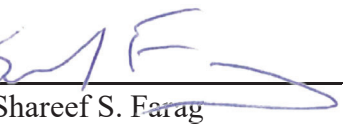
By: _____

Dwayne J. Clark, Founder, CEO & Chairman

Date: _____

Approved as to Form by Defense Counsel:

BAKER & HOSTETLER LLP

By:  _____
Shareef S. Farag
Nicholas D. Poper
Kerri H. Sakaue

Date: August 29, 2023

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Agreement as follows:

Plaintiff: _____
Daniela Melgoza

Date: _____

Plaintiff: _____
Andrea Salonga

Date: _____

Approved as to Form by Class Counsel:

SCHNEIDER WALLACE COTTRELL KONECKY LLP

By: _____
Carolyn Hunt Cottrell
David C. Leimbach
Michelle S. Lim

Date: _____

AEGIS LAW FIRM, APC

By: _____
Kashif Haque
Fawn F. Bekam

Date: _____

Defendant:

AEGIS SENIOR COMMUNITIES, LLC d/b/a AEGIS LIVING

By: _____
Dwayne J. Clark, Founder, CEO & Chairman

Date: 8/29/23

Approved as to Form by Defense Counsel:

BAKER & HOSTETLER LLP

By: _____
Shareef S. Farag
Nicholas D. Poper
Kerri H. Sakaue

Date: _____

Andrea Salonga, et al. v. Aegis Senior Communities, LLC d/b/a Aegis Living, Superior Court of California, County of Alameda, Case No. 22CV007450.

**NOTICE OF CLASS ACTION SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY**

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

You have been sent this Notice because there is a proposed settlement (the “Settlement”) of a class and collective action lawsuit that Plaintiffs Andrea Salonga and Daniela Melgoza (“Plaintiffs”) filed against Aegis Senior Communities, LLC d/b/a Aegis Living (“Defendant”). Defendant’s records show that you were employed as a non-exempt employee by Defendant in the State of California at some time between May 30, 2017 and May 28, 2023, and are therefore eligible to participate in the Settlement. The purpose of this Notice is to inform you of the pending Settlement and your rights under it.

Please understand that this is not a notice of a lawsuit against you. You have not been sued. You are not required to appear in Court in response to this Notice. Please review this Notice and consider your options carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING	If you do nothing, you will be sent a settlement payment following the later of (a) the date the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the date the Judgment becomes Final, and the releases of claims under California law will apply to you. By cashing your settlement check, you will also release claims under federal law, as described below in Section 6.
EXCLUDE YOURSELF (“OPT OUT”)	If you “opt out” of the lawsuit and choose not to be part of the Settlement as described below in Section 6, the release of claims under federal law and California law will not apply to you, and you <u>will not</u> receive any payment under this Settlement, except as described in the following sentence. If you are an Aggrieved Employee (defined below), you will receive a <i>pro rata</i> portion of the Net PAGA Amount (defined below) whether or not you “opt out” of the Settlement.
OBJECT	You may write an objection to the Court stating why you do not like the Settlement, as described below in Section 6. You may also appear in Court and explain why you do not like the Settlement or use an attorney to appear for you. If you object, this does not mean you opt out of the Settlement (as explained below, if you opt out of the Settlement, you will not be permitted to object to the Settlement).

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself from (or “opt out” of) the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The Superior Court of California County of Alameda has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on _____, 2023 at _____, before the Honorable Noël Wise at the Superior Court of California for the County of Alameda, Department 514, 24405 Amador Street, Hayward, CA 94544.

2. What Is This Case About?

The claims in this lawsuit are brought under California law and under the federal Fair Labor Standards Act (“FLSA”).

The lawsuit alleges that individuals whom Defendant employed as non-exempt employees in California, between May 30, 2017 and May 28, 2023 were not provided meal and rest breaks, were not compensated for all hours worked, were not paid minimum, straight time, overtime, or double time wages, were not paid all wages due upon termination, were not provided timely and compliant itemized wage statements, and were not reimbursed for necessary business expenses. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), unreimbursed business-related expenses, restitution, interest, attorneys’ fees and costs.

The lawsuit also alleges that individuals whom Defendant employed as non-exempt employees throughout the United States, between November 14, 2021 to May 14, 2022 were not appropriately paid minimum and overtime wages pursuant to the requirements of the FLSA.

Defendant denies these claims and believe that it has strong legal and factual defenses to them. Defendant also does not believe that Plaintiffs’ claims meet the requirements for class or collective certification. Nevertheless, in order to avoid the expense and delay associated with further litigation and appeals, Defendant has chosen to settle this matter and to make payments to current and former employees.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses.

The Administrator has created a Settlement website, which can be accessed at [\[INSERT URL\]](#). The Settlement website allows interested persons to view the Agreement, all papers filed by Class Counsel to obtain Court approval of the Agreement, and this Notice of Class Action Settlement

(in generic form). The Settlement website also provides contact information for Class Counsel and the Administrator.

3. How Will the Settlement Payment Be Distributed?

The total settlement amount is \$3,000,000.00, which Defendant will pay into a settlement fund. This amount will mostly be distributed to the current and former employees who meet the definitions for participating in the Settlement, but it will also be used to pay for attorneys' fees and costs awarded by the Court, any enhancement payments to Plaintiffs that are awarded by the Court, the settlement administration costs, and a payment to the California Labor and Workforce Development Agency (LWDA) that is required by PAGA.

The attorneys for Plaintiffs and the Settlement Class (referred to as "Class Counsel") will ask the Court to award them 35% of the settlement amount, which is \$1,050,000.00, to compensate them for their services in this matter. Class Counsel will also request reimbursement for their costs spent in litigating this case, not to exceed \$35,000.00. Class Counsel will file a motion with the Court setting forth the bases for their requested costs and fees.

Plaintiffs Andrea Salonga and Daniela Melgoza will ask the Court to award them \$10,000.00 and \$10,000.00, respectively, for their role as the named plaintiffs prosecuting this lawsuit on the behalf of all Class Members. This payment would also come from the settlement fund.

The settlement administration costs are capped at \$58,000.00, and this payment will also come from the settlement fund.

The payment to the LWDA and Aggrieved Employees in connection with the PAGA component of the Settlement will be \$75,000, and this payment will also come from the settlement fund.

The remainder of the settlement fund after subtracting the amounts described above is the Net Settlement Amount that will be distributed to Participating Individuals.

4. If I Choose to Participate in the Settlement, How Do I Receive Payment and How Much Can I Expect to Receive?

You do not need to do anything to be sent your settlement payment. Just watch your mail for a check and cash it when you get it. You will have 180 days from issuance of the check to cash it.

According to records maintained by Defendant, your total estimated settlement payment will be at least \$[REDACTED]. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (*i.e.*, it could be higher) and will be calculated as set forth below. All Settlement Award determinations will be based on Defendant's timekeeping, payroll, and/or other records for Class and Collective Members. Based on Defendant's records, you are estimated to have worked [REDACTED] workweeks for Defendant during the relevant period in the State of California, and [REDACTED] workweeks for Defendant during the relevant period in the United States of America, outside of the State of California.

If you dispute the number of workweeks as shown on this Notice, you may produce evidence to the Administrator establishing the dates you contend to have worked for Defendant. To do so, send a letter to the Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendant's records, your Settlement Award will be determined based on Defendant's records. Any disputes must be postmarked by [Insert Response Deadline] and should be mailed to [Insert Administrator Address]. The Administrator will notify you of the decision on the dispute.

Payments to participating Class Members will be calculated on the number of eligible workweeks. Each participating Class Member will be eligible to receive a pro rata share of the Net Settlement Amount based on the total number of eligible workweeks that the individual was employed by Defendant from May 30, 2017 through May 28, 2023 in the state of California. Participating Individuals will receive a *pro rata* share of the Net Settlement Amount as follows:

- For each week during which the Participating Individual was employed by Defendant at any time from May 30, 2017 through May 28, 2023 (for Class Members), and from November 14, 2021 to May 14, 2022 (for Collective Members who timely Opt-In to this Lawsuit), he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Participating Individual worked. Each workweek will be equal to one (1) settlement share. To reflect the increased value of state law claims, workweeks during which work was performed in California will instead be equal to three (3) settlement shares.
- The total number of settlement shares for all Participating Individuals will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating Individual's number of settlement shares to determine the Participating Individual's share of the Net Settlement Amount.

When calculating the individual Settlement Awards for purposes of these Notices of Settlement, the Administrator has assumed that no Class Members opt-out and all Collective Members opt-in. When calculating the individual Settlement Awards to Class Members following Final Approval (for purposes of preparing individual Settlement Award checks), the Administrator will not include Class Members who validly request exclusion from the Settlement or any Collective Member who fails to timely opt-in to this Action. This means that for purposes of the Notices of Settlement, the Administrator has assumed that all potential Class Members and Collective Members will participate in this Settlement, even though that may not remain the case following Final Approval. It is thus likely that your total estimated settlement payment will be higher than indicated in this Notice.

Whether or not they otherwise opt out of the Settlement, Aggrieved Employees who worked for Defendant between November 24, 2020 and May 28, 2023 (the "PAGA Period") in the state of California will be Participating Individuals for purposes of the settlement of the PAGA claim in the lawsuit and will receive a *pro rata* share of the Net PAGA Amount (*i.e.*, \$18,750) based on their number of workweeks employed by Defendant as non-exempt employees during the PAGA Period.

For tax reporting purposes, Settlement Awards to Participating Individuals will be allocated as follows: any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties; for the remainder of each Settlement Award, twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy-five (75%) of each Settlement Award shall be allocated as penalties and interest, and five percent (5%) of each Settlement Award shall be allocated as expense reimbursements. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Participating Individuals should consult with their own tax advisors concerning the tax consequences of the Settlement.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the California Unclaimed Property Fund in the name of the respective Participating Individuals, subject to the Court's approval in the Final Approval Order.

It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are the Releases?

Upon Final Approval of the Agreement and payment of amounts set forth under the Settlement, Participating Individuals release claims as follows ("Released Claims") against Defendant, their present and former parent companies, subsidiaries, related or affiliated companies, and their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the "Released Parties"):

- **Released Class Claims:** All Participating Class Members shall, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties from any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses arising from or related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Operative Complaint based on the factual predicates alleged in the Operative Complaint, including, but not limited to: (a) any alleged failure to pay all wages due including minimum wages or overtime wages; (b) any alleged failure to timely pay wages at termination or during employment; (c) any alleged failure to provide meal or rest periods or to pay meal or rest period premiums; (d) any alleged failure to maintain and preserve, in a centralized location in California, any required payroll or employee records; (e) any alleged failure to provide compliant wage statements; (f) any alleged failure to reimburse business expenses; (g) any right or claim for civil penalties pursuant to the California Labor Code, the California Industrial Welfare Commission Wage Orders, the California Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*); (h) any right or claim for unfair business practices in violation of California Business & Professions Code § 17200 *et seq.*; and (i) any violation or breach of the California Labor Code arising from or related to the conduct or omission alleged, or

could have reasonably been alleged, in the Operative Complaint and the conduct or omission ascertained in the course of the Action, including without limitation, any violation or breach of California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2802, or any other similar state or local statute, wage order, rule, regulation, ordinance, or authority. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- **Released PAGA Claims:** All Aggrieved Employees shall release and discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all individual and representative claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, in the Action based on the facts stated in the Operative Complaint and ascertained in the course of the Action, including, but not limited to, any right or claim for PAGA penalties predicated on alleged nonpayment or under-payment of minimum and overtime wages, failure to pay or under-payment of wages, overtime, meal and rest period premiums, failure to provide meal and rest periods, nonpayment or under-payment of premiums for meal or rest period violations, failure to timely pay wages, failure to pay all wages due at termination, failure to maintain accurate records, failure to provide and/or maintain accurate and itemized wage statements, failure to reimburse business expenses, and any claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, including any alleged violations of the California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 223, 226, 226.7, 510, 512, 1174, 1182.11, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802.
- In addition, if you cash or deposit your Settlement check, you will also be deemed to have opted- in to this action pursuant to the FLSA and will thereby release, and agree to release, the **Released FLSA Claims**, which include any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys' fees, costs, liabilities, expenses, and losses under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* or under any applicable state law, statute, rule, or regulation during the period from November 14, 2021 to May 14, 2022, which arise from or are related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Operative Complaint.

6. What Are My Rights?

Do Nothing: If you are a Class Member and do not timely and validly opt-out, you will automatically become a Participating Class Member and receive your prorated Settlement Award, and will be bound by the Settlement including its release provisions.

Opt-Out: If you are a member of the Class Members and do not wish to be bound by the Settlement, you must submit a written request for exclusion from the Settlement ("opt-out"), postmarked by **Insert Response Deadline**. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), employee ID, and must be

signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Administrator at [Insert Administrator Address]. Any person who requests exclusion (opts out) of the settlement will not be entitled to any Settlement Award and will not be bound by the Agreement or have any right to object, appeal or comment thereon. (Notwithstanding the foregoing, you cannot opt out or otherwise exclude yourself from the PAGA component of the Settlement—if you are an Aggrieved Employee, whether or not you submit a written request for exclusion from the Settlement, you will receive a pro rata portion of the Net PAGA Amount and you will be bound by the release of the Released PAGA Claims described above.)

Object: If you received this Notice and wish to object to the Settlement, you must submit a written statement objecting to the Settlement by [Insert Response Deadline]. The statement must state the factual and legal grounds for your objection to the settlement. The statement must state your full name, address, telephone number, and email address (if applicable), and must be signed by you. The statement must be mailed to the Administrator at the following address: [Insert Administrator's Address].

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the Lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defense Counsel on or before the Response Deadline. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to Class Counsel and Defense Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

You may also withdraw your objection in writing by mailing a withdrawal statement to the Court and counsel for the Parties postmarked no later than [INSERT DATE – 10 business days before final approval hearing], orally at the Final Approval hearing, or as otherwise ordered by the Court.

7. Can Defendant Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with Defendant or future work or employment with Defendant. It is unlawful for Defendant to take any adverse action against you as a result of your participation in this Lawsuit. In fact, Defendant encourages you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiff and the Settlement Class?

Plaintiff and individuals participating in the Settlement are represented by the following attorneys acting as Class Counsel:

SCHNEIDER WALLACE COTTRELL KONECKY LLP

Carolyn H. Cottrell
David C. Leimbach
Michelle S. Lim
2000 Powell Street, Suite 1400
Emeryville, CA 94608

AEGIS LAW FIRM, PC

Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

Defendant is represented by the following attorneys:

BAKER & HOSTETLER LLP

Shareef S. Farag
Nicholas D. Poper
Kerri H. Sakaue
11601 Wilshire Boulevard, Suite 1400
Los Angeles, CA 90025

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$3,000,000. You do not have to pay the attorneys who represent the Settlement Class. The Agreement provides that Class Counsel will receive attorneys' fees of up to thirty-five percent (35%) of \$3,000,000.00 (i.e., \$1,050,000.00) plus their out-of-pocket costs, not to exceed \$35,000.00. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where Can I Get More Information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Agreement available at the Settlement website at [\[Insert URL\]](#), by contacting Class Counsel at [\[Insert Class Counsel Phone Number\]](#), by accessing the Court docket in this case, for a fee, through the Court's website at <https://www.alameda.courts.ca.gov/> or by visiting the Superior Court of California, for the County of Alameda, 24405 Amador Street, Hayward, CA 94544, Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

NOTICE OF COLLECTIVE ACTION SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY

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

You have been sent this Notice because there is a proposed settlement (the “Settlement”) of a collective action lawsuit that Plaintiffs Andrea Salonga and Daniela Melgoza (“Plaintiffs”) filed against Aegis Senior Communities, LLC d/b/a Aegis Living (“Defendant”). You are receiving this Notice either because you previously completed an Opt-In Consent Form to join this case or because Defendant’s records show that you were employed by Defendant as a non-exempt employee in the United States at some time between November 14, 2021 and May 14, 2022. The purpose of this Notice is to inform you of the pending Settlement and your rights under it.

Please understand that this is not a notice of a lawsuit against you. You have not been sued. You are not required to appear in Court in response to this Notice. Please review this Notice and consider your options carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
COMPLETE AND RETURN THE OPT-IN CONSENT FORM AND CASH THE CHECK YOU WILL RECEIVE IF THE SETTLEMENT IS APPROVED	If you fill out and sign the attached Opt-In Consent Form, you will be “opting in” to the Settlement, you will receive a Settlement Award under the Settlement, and the Settlement and the release of claims described below will apply to you. (Please note that the check is not enclosed with this notice — it will be sent later if you complete and submit the Opt-In Consent Form and after the Court finally approves the Settlement.)
DO NOTHING AND DO NOT RECEIVE ANYTHING UNDER THE SETTLEMENT	If you do not fill out and sign the attached Opt-In Consent Form, you will be choosing not to be part of the Settlement, you will not be entitled to a Settlement Award under the Settlement, and the release of claims will not apply to you.

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement by “opting in” to the Settlement and the procedure to opt in. If you do not “opt in” to the settlement by completing, signing, and returning the attached Opt-In Consent Form, you will not receive a Settlement Award and will not be bound by the Agreement.

The Superior Court of California, County of Alameda has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on _____, 2023 at _____, before the Honorable Noël Wise at the Superior Court of California for the County of Alameda, Department 514, 24405 Amador Street, Hayward, CA 94544.

2. What Is This Case About?

This lawsuit alleges that individuals whom Defendant employed as non-exempt employees throughout the United States, from November 14, 2021 to May 14, 2022 were not compensated for all hours worked, were not properly paid minimum, straight time, or overtime wages. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties interest, attorneys' fees and costs. The claims in this lawsuit are brought under federal law.

Defendant contends that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that the wage and hour policies and practices at issue are lawful and have been lawful throughout the relevant time period. Defendant also contends that Plaintiffs' claims do not meet the requirements for a collective action.

This Settlement is the result of good faith, arm's length negotiations between Plaintiffs and Defendant, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Collective Members. This Settlement is a compromise and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiffs' claims or Defendant's defenses.

The Settlement Administrator has created a Settlement website, which can be accessed at **INSERT URL**. The Settlement website allows interested persons to view the Agreement, all papers filed by Class Counsel to obtain Court approval of the Agreement, and this Notice of Collective Action Settlement (in generic form). The Settlement website also provides contact information for Class Counsel and the Administrator, and may be accessed to submit electronically-completed Opt-In Consent Forms.

3. How Will the Settlement Payment Be Distributed?

The total settlement amount is \$3,000,000.00, which Defendant will pay into a settlement fund. This amount will mostly be distributed to the current and former employees who meet the definitions for participating in the Settlement, but it will also be used to pay for attorneys' fees and costs awarded by the Court, any enhancement payments to Plaintiffs that are awarded by the Court, the settlement administration costs, and a payment to the California Labor and Workforce Development Agency ("LWDA") that is required by the California Private Attorneys General Act ("PAGA").

The attorneys for Plaintiffs and the Settlement Class (referred to as "Class Counsel") will ask the Court to award them 35% of the settlement amount, which is \$1,050,000.00, to compensate them for their services in this matter. Class Counsel will also request reimbursement for their costs spent

in litigating this case, not to exceed \$35,000.00. Class Counsel will file a motion with the Court setting forth the bases for their requested costs and fees.

Plaintiffs Andrea Salonga and Daniela Melgoza will ask the Court to award them \$10,000.00 and \$10,000.00, respectively, for their role as the named plaintiffs prosecuting this lawsuit on the behalf of all Class Members. This payment would also come from the settlement fund.

The settlement administration costs are capped at \$58,000.00, and this payment will also come from the settlement fund.

The payment to the LWDA and Aggrieved Employees in connection with the PAGA component of the Settlement will be \$75,000, and this payment will also come from the settlement fund.

The remainder of the settlement fund after subtracting the amounts described above is the Net Settlement Amount that will be distributed to Participating Individuals, which include Participating Class Members, Opt-In Plaintiffs, and Aggrieved Employees. Opt-In Plaintiffs are Collective Members who submit a valid Opt-In Consent Form, which will be filed with the Court.

4. How Much Can I Expect to Receive?

According to records maintained by Defendant, your total estimated settlement payment will be at least \$ _____. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (*i.e.*, it could be higher) and will be calculated as set forth above. All Settlement Award determinations will be based on Defendant's timekeeping, payroll, and/or other records for Class and Collective Members. Based on Defendant's records, you are estimated to have worked _____workweeks for Defendant during the relevant period in the United States. **To receive payment under the settlement as an Opt-In Plaintiff, you MUST complete, sign, and submit the Opt-In Consent Form that will be sent to you in several months.**

If you dispute the number of workweeks as shown on this Notice, you may produce evidence to the Administrator establishing the dates you contend to have worked for Defendant. To do so, send a letter to the Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendant's records, your Settlement Award will be determined based on Defendant's records. Any disputes must be postmarked by [Insert Response Deadline] and should be mailed to [Insert Settlement Administrator Address]. The Administrator will notify you of the decision on the dispute.

Payments to Opt-In Plaintiffs will be calculated on the number of eligible workweeks. Each Opt-In Plaintiff will be eligible to receive a *pro rata* share of the Net Settlement Amount based on the total number of eligible workweeks that the individual worked for Defendant from November 14, 2021 to May 14, 2022. Participating Individuals will receive a *pro rata* share of the Net Settlement Amount as follows:

- For each week during which the Participating Individual was employed by Defendant at any time from May 30, 2017 to May 28, 2023 (for Class Members), and from November

14, 2021 to May 14, 2022 (for Opt-In Plaintiffs), he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of Workweeks the Participating Individual was employed. Each workweek will be equal to one (1) settlement share. To reflect the increased value of state law claims, workweeks during a Participating Individual was employed in California will be equal to three (3) settlement shares.

- The total number of settlement shares for all Participating Individuals will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Participating Individual's number of settlement shares to determine the Participating Individual's share of the Net Settlement Amount.

When calculating the Settlement Awards for purposes of these Notices of Settlement, the Administrator has assumed that no Class Members opt out and all Collective Members opt in. When calculating the Settlement Awards to Class Members following Final Approval (for purposes of preparing Settlement Award checks), the Administrator will not include Class Members who validly request exclusion from the Settlement or any Collective Member who fails to timely opt-in to this Action. This means that for purposes of the Notices of Settlement, the Administrator has assumed that all potential Class Members and Collective Members will participate in this settlement, even though that may not remain the case following Final Approval. It is thus likely that your total estimated settlement payment will be higher than indicated in this Notice.

For tax reporting purposes, Settlement Awards to participating Collective Members will be allocated as follows: twenty percent (20%) of each Settlement Award shall be allocated as wages, seventy-five (75%) of each Settlement Award shall be allocated as penalties and interest, and five percent (5%) of each Settlement Award shall be allocated as expense reimbursements. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Opt-In Plaintiffs should consult with their own tax advisors concerning the tax consequences of the Settlement.

If you participate in the Settlement, you will have 180 days to cash the check that will be sent to you. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the California Unclaimed Property Funds in the name of respective Participating Individuals subject to the Court's approval in the Final Approval Order.

It is your responsibility to keep a current address on file with the Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are the Releases for Collective Members Who Opt In?

Upon Final Approval of the Agreement and payment of amounts set forth under the Settlement, all Collective Members who opt in by submitting their completed and signed Opt-In Consent Forms will release claims as follows against Defendant, their present and former parent companies, subsidiaries, related or affiliated companies, and their shareholders, officers, directors, employees,

agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (collectively, the “Released Parties”):

Released FLSA Claims: Members of the FLSA Settlement Collective who have previously consented to join the FLSA claim or who opt in and consent to the Settlement by cashing their settlement checks shall release the Released FLSA Claims, which include any and all causes of action, claims, rights, damages, punitive or statutory damages, penalties, interest, attorneys’ fees, costs, liabilities, expenses, and losses under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* or under any applicable state law, statute, rule, or regulation during the period from November 14, 2021 to May 14, 2022, which arise from or are related to the acts, facts, transactions, theories, occurrences, representations, or omissions that were alleged, or reasonably could have been alleged, in the Operative Complaint.

6. What Are My Rights?

Please see Section 4 above for an estimate of how much you will receive under the settlement if you choose to opt in as a Collective Member. To receive payment under the settlement as an Opt-In Plaintiff, you **MUST** fill out and return the attached opt-in consent form. Therefore, you have two options:

- **Opt-In:** Fill out, sign, and return the attached Opt-In Consent Form to participate in the Settlement and receive a payment as an Opt-In Plaintiff.
- **Do Nothing:** Do not fill out and do not return the attached Opt-In Consent Form. If you choose not to opt-in, you will not receive a settlement check under the Settlement, you will not be entitled to receive any payment under the Settlement as a Collective Member, and your claims against Defendant under the FLSA will not be released.

7. Can Defendant Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this Lawsuit will in no way affect your work or employment with Defendant or future work or employment with Defendant. It is unlawful for Defendant to take any adverse action against you as a result of your participation in this Settlement. In fact, Defendant encourage you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class?

Plaintiffs and individuals participating in the Settlement are represented by the following attorneys acting as Class Counsel:

SCHNEIDER WALLACE COTTRELL KONECKY LLP
Carolyn H. Cottrell
David C. Leimbach
Michelle S. Lim
2000 Powell Street, Suite 1400
Emeryville, CA 94608

AEGIS LAW FIRM, PC
Samuel A. Wong
Kashif Haque
Jessica L. Campbell
Fawn F. Bekam
9811 Irvine Center Drive, Suite 100
Irvine, California 92618

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$3,000,000. You do not have to pay the attorneys who represent the Settlement Class. The Agreement provides that Class Counsel will receive attorneys' fees of up to thirty-five percent (35%) of \$3,000,000.00 (i.e., \$1,050,000) plus their out-of-pocket costs, not to exceed \$35,000. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amounts of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where Can I Get More Information?

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Settlement, you should contact the Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Agreement available at the Settlement website at [\[Insert URL\]](#), by contacting Class Counsel at [\[Insert Class Counsel Phone Number\]](#), by accessing the Court docket in this case, for a fee, through the Court's website at <https://www.alameda.courts.ca.gov/> or by visiting the Superior Court of California, for the County of Alameda, 24405 Amador Street, Hayward, CA 94544, Monday through Friday, excluding Court holidays.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.

OPT-IN CONSENT FORM

Salonga, et al. v. Aegis Senior Communities, LLC
Superior Court of California, County of Alameda Case No. 22CV007450.

Complete And Submit To:

[Settlement Administrator information and address]

This Opt-In Consent Form may also be completed and submitted online at [URL].

Name: [Mandatory]	Phone No. 1: [Not Mandatory] Phone No. 2: [Not Mandatory]
Address: [Not Mandatory]	E-mail Address: [Not Mandatory]

CONSENT TO JOIN COLLECTIVE ACTION

Pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.

1. I consent and agree to pursue my claims relating to and arising from Defendant (Aegis Senior Communities, LLC d/b/a Aegis Living) alleged violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq. in connection with the above-referenced litigation.
2. I have worked as a non-exempt employee for Defendant in the United States at some point of time between November 14, 2021 to May 14, 2022.
3. I understand that this litigation has been filed as a proposed collective action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, et seq. I hereby consent, agree, and opt-in to become a Plaintiff herein and be bound by any judgment of the Court or any settlement of this action.
4. I specifically authorize my attorneys, Schneider Wallace Cottrell Konecky LLP and Aegis Law Firm, PC, as my agents, to prosecute this lawsuit on my behalf and to negotiate a settlement of any and all claims I have against the Defendant in this litigation.

[Mandatory] (Date Signed)	[Mandatory] (Signature)
------------------------------	----------------------------

****IMPORTANT NOTE****

Statute of Limitations concerns mandate that you return this form as soon as possible to preserve your rights.