D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Melissa Rodriguez (SBN 352716)
m.rodriguez@d.law
450 N. Brand Blvd. Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
d.yeremian@d.law
450 N. Brand Blvd. Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff MARK A. FLETCHER,
an individual on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

MARK A. FLETCHER, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. HEBREW HOME FOR AGED DISABLED, a California nonprofit corporation; SAN FRANCISCO CAMPUS FOR JEWISH LIVING, a California entity form unknown; JEWISH HOME AND SENIOR LIVING FOUNDATION, a California nonprofit corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: CGC-23-603795 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Honorable Jeffrey S. Ross Department 606 **DECLARATION OF ENOCH J. KIM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF THE PARTIES' JOINT STIPULATION OF CLASS AND PAGA SETTLEMENT AGREEMENT** Date: April 18, 2025 Time: 9:30 a.m. Location: Department 606 Original Complaint Filed: January 4, 2023 First Amended Complaint Filed: March 9, 2023 Trial Date: None Set.

DECLARATION OF ENOCH J. KIM

I, Enoch J. Kim, declare as follows:

1. I am an attorney licensed and admitted to practice before all courts of the State of California and the United States District Court for the Central, Southern, Eastern, and Northern Districts of California. I am Senior Counsel at D.LAW, INC. and counsel for Plaintiff Mark A. Fletcher ("Plaintiff"), on behalf of himself and other similarly situated employees of Defendants Hebrew Home for Aged Disabled, San Francisco Campus for Jewish Living, and Jewish Home and Senior Living Foundation ("Defendants") (collectively, "the Parties").

2. All of the matters set forth herein are within my personal knowledge. I submit this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Parties' Joint Stipulation of Class and PAGA Action Settlement Agreement ("Motion"). A true and correct copy of the Parties' Joint Stipulation of Class and PAGA Action Settlement Agreement ("Settlement Agreement") is attached hereto as Exhibit 1.

Procedural History

3. On January 4, 2023, Plaintiff Mark A. Fletcher commenced a Class Action by filing a Complaint alleging ten causes of action against Defendants for (1) Failure to Pay Minimum Wages and All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation Labor Code § 221; (7) Violation Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (10) Violation of California Business and Professions Code § 17200 *et seq*. (the "Action"). Plaintiff gave timely written notice to Defendants and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on January 3, 2023 (LWDA-CM-927304-23). On March 9, 2023, after the 65-day statutory period had passed, Plaintiff filed his First Amended Complaint, which added an eleventh cause of action for penalties under PAGA, Labor Code §2698.

4. After exchanging and reviewing informal discovery and participating in mediation, the Parties reached a settlement. As part of the Parties' settlement, Plaintiff agreed to file a Second

Amended Complaint to allege an additional cause of action for failure to pay proper sick pay under Labor Code § 246 as alleged in Plaintiff's January 4, 2023 LWDA notice letter. The Parties simultaneously file a joint stipulation and proposed order for leave to file a second amended complaint, and upon the court granting the Parties' request, Plaintiff will file a Second Amended Complaint, alleging failure to pay proper sick pay under Labor Code § 246 ("Operative Complaint").

Plaintiff's Claims And Defendants' Denials

5. Plaintiff's claims are based on Defendants' alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, failure to pay final wages when required, and failure to provide accurate wage statements.

6. Specifically, Plaintiff alleges that Defendants required Plaintiff and Class Members to undergo COVID screenings before being permitted to clock in, and due to a shortage of available time clocks, Plaintiff and Class Members frequently had to wait several minutes before being able to clock in for their shifts. Moreover, Plaintiff alleges that Plaintiff and Class Members were required to continue working after clocking out for the day and remain on-call to respond to emergency calls based on Defendants' policy of discouraging and prohibiting overtime pay. Plaintiff also alleges that Defendants had a uniform policy of rounding employee work hours to the nearest quarter hour, resulting in a reduction of Plaintiff's and Class Members' recorded hours to match their scheduled hours rather than their actual hours worked.

7. Defendants contend that it did not require off the clock work or have a time rounding policy, paid for all reported hours worked, paid wages at the proper rates, that Class Members were instructed to record all hours worked, and that any off-the-clock work was performed without Defendants' knowledge and de minimis and therefore not compensable. Defendant also argues that given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory.

8. Plaintiff also alleges that Defendants failed to provide proper meal breaks to Plaintiff and Class Members. For example, due to work demands and management pressure from Defendants, Plaintiff alleges that Plaintiff and Class Members were often unable to take a duty-free 30-minute

meal break during their shifts. Plaintiff alleges that their meal periods were constantly interrupted by work-related phone calls and demands.

9. Defendants contend that Class Members were (1) advised of their right to meal periods, (2) given a reasonable opportunity to take their meal periods, and (3) informed that they should report any missed meal periods to Defendants so that they could be properly compensated. Defendants further contend that when any missed meal periods were properly reported to Defendants, Defendants provided premium pay to Class Members as reflected in their time and pay records. Defendants also contend that the meal break claim requires individualized inquiries which would preclude class certification. If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim.

10. Plaintiff also contends that Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. Plaintiff contends that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift but were required to work through their rest breaks during their shifts due to heavy work demands from Defendants.

11. Similar to meal breaks, Defendants contend that Class Members were (1) advised of their right to rest periods, (2) given a reasonable opportunity to take their rest periods during their shifts, and (3) informed that they should report any missed rest periods to Defendants so that they could be properly compensated. Considering that unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim.

12. Additionally, Plaintiff alleges that Defendants required Plaintiff and Class Members to use their personal cellular phones for work-related business, for which they were not reimbursed. Defendants maintained that Plaintiff and Class Members were not required to use their personal cell phones to perform their job duties and were advised to seek reimbursement if they were required to use their own personal devices. Defendants further contend that individualized issues relating to this claim would preclude class certification.

13. As for the wage statement and waiting time penalties claims, Defendants contend that these claims are merely derivative of the underlying claims and that Plaintiff and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. Defendants further contend that even if they could first establish liability for the underlying claims, Plaintiff and Class Members would be unable to establish that Defendants' conduct was willful and knowing as required by the relevant statutes since Defendants acted in good faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members. Thus, Defendants contend that the wage statement and waiting time penalties claims to have little to no value.

14. Similarly, Defendants contend that the PAGA claim is also derivative of the underlying claims in the Action and ultimately fails because the underlying claims have no merit. Defendants also contend that even if Plaintiff and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. Defendants also contend that trial of the PAGA claim would be unmanageable.

15. Defendants generally deny all claims alleged in the Action and further deny class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. However, after careful consideration, Defendants have concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein.

Investigation

16. Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related

policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts.

17. Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement.

Settlement Efforts

18. On August 3, 2023, the Parties participated in an all-day mediation with Hon. Judge Broadman, a respected and highly experienced mediator in wage and hour class actions. During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a class certification motion, as well as the law unpaid wages, sick and supplemental COVID pay, meal periods, rest periods, wage statements, and final pay. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit through a mediator's proposal. The Parties continued to work together to finalize a long-form settlement agreement, which resulted in the Settlement Agreement before the Court for approval.

19. From Class Counsel's review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the risks of further litigation, the possibility of losing class certification and/or dispositive motions, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. Further, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced

to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

<u>Summary of the Settlement</u>

20. Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay $500,000.00 (Five Hundred Thousand Dollars with Zero Cents) ("Gross Settlement Amount" or "GSA") on a non-reversionary basis. (Exhibit 1, Settlement Agreement, ¶ I.17.) In addition to and separate from the Gross Settlement Amount, Defendant will pay the employers' portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. The Settlement Agreement defines the "Class" as all non-exempt employees in California who are or previously were employed by Defendants Hebrew Home for Aged Disabled, San Francisco Campus for Jewish Living, and Jewish Home and Senior Living Foundation during the Class Settlement Period, which is January 4, 2019 through the date of preliminary approval of the Settlement." (Exhibit 1, Settlement Agreement, ¶ I.2), and the "Settlement Class Members" are members of the Class who do not request exclusion from the Settlement. (Exhibit 1, Settlement Agreement, ¶ I.41.) The Settlement Agreement also defines "PAGA Employees" as all non-exempt employees employed by Defendants who worked at least one pay period during the PAGA Period, which is January 4, 2022 to the date of preliminary approval. (Exhibit 1, Settlement Agreement, ¶¶ 25, 26.) The "Net Settlement Amount" means the Gross Settlement Amount less Court-approved attorneys' fees, costs, enhancement award to Plaintiff, PAGA Payment, and Settlement Administrator costs." (Exhibit 1, Settlement Agreement, ¶ I.18.) The remainder is to be paid to Settlement Class Members as Individual Settlement Payments. (*Id.*) These amounts are detailed as follows:

- <u>Class Counsel Award</u>: Up to one-third (1/3rd) of the Gross Settlement Amount, that is up to $166,666.67 for attorneys' fees plus reasonable litigation costs and expenses not to exceed fifteen thousand dollars ($15,000.00) (Exhibit 1, Settlement Agreement, ¶ 64.d.i);
- <u>Class Representative Service Award</u>: Up to $10,000.00 to Plaintiff as an enhancement for service as the class representative (Exhibit 1, Settlement Agreement, ¶ 64.c.d.i);
- <u>Settlement Administrator Costs:</u> Up to $16,000.00 to the Settlement Administrator for its

fees and costs to administer the Settlement (Exhibit 1, Settlement Agreement, ¶ 64.f);

- PAGA Payment: $20,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the PAGA Employees ($5,000.00) to be paid on a pro rata basis to the PAGA Employees based on the number of pay periods each PAGA Employee worked during the PAGA Period ("PAGA Settlement Payment") and 75% allocated to the LWDA ($15,000.00) will be paid to the LWDA ("LWDA Payment") (Exhibit 1, Settlement Agreement, ¶ 64.e.)

21. If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **$272,333.33**. Each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payments") will be calculated based on the number of workweeks the Class Member worked in a non-exempt, hourly position during the Settlement Class Period ("Qualified Workweeks"). (Exhibit 1, Settlement Agreement, ¶ 64.b.) For the 1,452 Settlement Class Members estimated as of the date of the Parties' Memorandum of Understanding, the average gross Individual Settlement Payment share, using a straight average, is $187.56. If the Court approves a lesser amount for any of the above-requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Settlement Class Members. (Exhibit 1, Settlement Agreement, ¶ I.16.)

22. The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit 1, to all Class Members in no event later than fourteen (14) calendar days after receiving the Class Data via first-class United States Postal Service ("USPS") mail. (Exhibit 1, Settlement Agreement, ¶ 62.c.) The Class Notice provides each Class Member's starting and ending dates of employment in a class position during the Class Settlement Period, the number of Qualified Workweeks calculated by the Settlement Administrator, and the Settlement Administrator's calculation of each Class Member's estimated Individual Settlement Payment. (Exhibit 1, Settlement Agreement, ¶ 62.b.2.ii.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of Qualified Workweeks and/or pay periods attributed to each Class Member per Defendants' records. (Exhibit 1, Settlement Agreement,

Exhibit 1, Class Notice.) Class Members will have forty-five (45) days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of Qualified Workweeks and/or pay periods. (Exhibit 1, Settlement Agreement, ¶ I.38.) Class Members who received a re-mailed Class Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline. (Exhibit 1, Settlement Agreement, ¶ 62.d.)

23. Defendants will fund the Gross Settlement Amount by making four quarterly payments to the Qualified Settlement Fund established by the Settlement Administrator over a period of twelve months. (Exhibit 1, Settlement Agreement, ¶ I.17.) The first payment will be made within 30 days of the Court's order granting final approval of the Settlement (i.e., the date of entry of the Final Approval Order). (*Id.*) The installment plan outlined in the Settlement Agreement was crucial for the Parties to reach a settlement, as Defendants' financial circumstances made such an arrangement essential to move forward with the settlement and help avoid unnecessary costs and expenses associated with prolonged litigation and trial.

Certification for Settlement Purposes Only is Appropriate

24. Plaintiff alleges that the proposed Class satisfies the criteria for certification of a settlement class under California law, as embodied in California Code of Civil Procedure § 382. Defendants have agreed to the conditional certification of the class for settlement purposes only. Defendants do not concede that certification is appropriate outside of this Settlement and preserve all rights to oppose certification if, for any reason, the settlement does not become effective. In general, courts may take a proposed settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a "lesser standard" of scrutiny applies in certifying classes for settlement purposes. *Id*. Therefore, the Court should take into consideration the fact that the Parties have settled their claims and stipulated to certification for settlement purposes when assessing whether the Settlement is fair and reasonable.

25. Numerosity and Ascertainability. The putative Class is so numerous that joinder of all members is impractical. Class Members are all non-exempt employees in California who are or previously were employed by Defendants Hebrew Home for Aged Disabled, San Francisco Campus for Jewish Living, and Jewish Home and Senior Living Foundation during the Class Settlement

Period, which is January 4, 2019 through the date of preliminary approval of the Settlement. Defendants have identified 1,452 Class Members based on a review of its payroll and personnel records as of the date of the Parties' Memorandum of Understanding. Thus, there is numerosity and ascertainability.

26. Well-Defined Community of Interest. Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to reimburse business expenses, failure to pay final wages when required, and failure to provide accurate wage statements. Plaintiff contends Defendants' practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members.

27. Typicality. The class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative Class Members and if their claims rest on the same legal theories. Here, Plaintiff alleges that his claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. Plaintiff and Class Members were employed by Defendants during the Class Settlement Period and were subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. Thus, the typicality requirement is satisfied.

28. Adequacy. Plaintiff's interests are aligned with those of the Class Members, as he has suffered the same injuries as the Class Members and has no conflicts of interest. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and effectuating a settlement. Furthermore, as set forth below, Class Counsel are experienced in wage-and-hour litigation, especially class actions, and have zealously represented the interests of the class in litigating this case and have no conflicts of interest. Accordingly, the adequacy requirement is satisfied.

29. Predominance and Superiority. Plaintiff contends that individualized issues do not predominate over the issues of law and fact that are common to the Class as a whole. As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendants. Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members.

30. Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. Although the alleged injury resulting from Defendants' policies and practices is allegedly real and significant, the cost of individually litigating each such case against Defendants would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually, this would result in over 1,452 individual actions against Defendants. Here, the alternative methods of resolution are individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery.

The Settlement is Fair, Adequate, and Reasonable

31. In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The Settlement satisfies all of these requirements.

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.

32. The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above, Defendants presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured that negotiations were non-collusive and well-informed.

B. Extent of Discovery and Stage of Proceedings.

33. As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses

C. Strength of Plaintiff's Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

34. As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years, which would have further weakened Defendants' financial condition and significantly restricted its ability to pay any judgment. Even if Plaintiff were to certify the class, the Parties would

incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

D. The Risk of Maintaining Class Action Status Through Trial.

35. Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff proposed class was certifiable is somewhat speculative. Absent a settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Class, resulting in less overall recovery.

36. Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and that uncertainty.

E. The Presence of a Governmental Participant.

37. On March 25, 2025, Plaintiff submitted the Settlement Agreement and this Motion and supporting documents to the LWDA. A true and correct copy of the confirmatory email from the LWDA is attached hereto as **<u>Exhibit 2.</u>**

F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.

38. Because the class consists of numerous employees, it was unlikely that the potential monetary claims of individual Class Members would have proved viable without the class-action mechanism. The Settlement Agreement should be approved in light of two California appellate

decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

39. The strength of the Plaintiff's case in light of the settlement amount is deemed by courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay wages (including overtime), failed to provide meal and rest breaks, failed to provide accurate wage statements, failed to provide waiting time penalties, and failed to pay final wages when required in violation of California law. Plaintiff provided substantial discounts to his estimate of Defendants' estimated liability exposure taking into account Defendants' above assertions and ability to pay.

40. If the Court approves the requested allocations from the Gross Settlement Amount of $500,000.00 as addressed above, the Net Settlement Amount is estimated to be **$272,333.33**. There are approximately 1,452 total Class Members as of the date of the Parties' Memorandum of Understanding. If there are no exclusions from the Class, the average gross Individual Settlement Payment per Class Member, using a straight average, is $187.56.

41. Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as follows: $33,160.40 for unpaid wages claims, including minimum and overtime wages, due to off the clock work; $198,962.40 for meal period violations; $198,962.40 for rest period violations; $125,000.00 wage statement penalties; $489,888.00 in waiting time penalties; and $250,000.00 for PAGA penalties. As such, the total estimated realistic exposure Defendants could face is $1,295,973.20.

42. The Gross Settlement Amount of $500,000.00 represents a recovery for the Class of approximately 38.58% of the total realistic exposure Plaintiff estimated that Defendants could face on the primary claims in this case. Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and particularly in light of Defendants' ability to pay.

Summary

43. The foregoing discussion establishes the adequacy of the Settlement amount in light of the merits of Plaintiff's case and establishes the fairness of the class-action settlement in the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. It does so by explaining the legal basis for each of Plaintiff's causes of action, summarizing the evidence that Class Counsel gathered in support of those causes of action, and relating to Defendants' legal and factual arguments that worked to detract from the strength of Plaintiff's case.

44. Class Counsel applied reasonable and justified discounts, considering the facts and legal contexts outlined above. These substantial discounts were necessary, especially considering Defendant's financial condition and ability to pay, which was a critical factor in the decision-making process for the Settlement and payment plan. In addition, Defendants argued that given Defendant's written policies, practices, and unrecorded hours are likely subject to individualized inquiry, making the certification of all Class Members less than a certainty. This Settlement, like most others, was the product of compromise. As addressed above and by adding up numbers, Plaintiff estimated that Defendants faced approximately $1,295,973.20. in total liability exposure on Plaintiffs' main claims. The Gross Settlement Amount of $500,000.00 therefore represents a recovery for the Class Members of approximately 38.58% of the total maximum liability exposure Plaintiff estimated Defendants could face on these class-wide claims. Class Counsel submits that this is an optimal result for the Class in light of all of the factors described above.

<u>Class Representative Service Award is Fair and Reasonable</u>

45. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. Both before and after filing this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case. Plaintiff has provided Class Counsel with information about Defendants, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the settlement agreement. Plaintiff has diligently, adequately, and fairly represented the Class Members, and has not placed his interests above any member of the putative Class. This sort of payment to a Class representative has been a common feature of settlements

negotiated by Class Counsel and routinely approved by courts. In light of the foregoing, Class Counsel believes that the $10,000.00 incentive award to the Class Representative is fair and reasonable.

Proposed Class Notice Provides Adequate Notice

46. The notification procedure set out in the Settlement Agreement provides the greatest likelihood that each and every Class Member will receive the Class Notice, attached to the Settlement as Exhibit 1. Under the Settlement, Defendants will deliver the Class Data to the Settlement Administrator not later than thirty (30) calendar days after the Court grants Preliminary Approval of the stipulated Settlement. (Exhibit 1, Settlement Agreement, ¶ 62.a.) The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit 1, to all Class Members no event later than 14 (fourteen) days after receiving the Class Data via USPS mail. (Exhibit 1, Settlement Agreement, ¶ 62.c.)

47. Any Class Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline must be re-mailed to the forwarding address affixed thereto. (Exhibit 1, Settlement Agreement, ¶ 62.d.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address, and/or Social Security number of the Class Member involved. The Class Notice will be mailed to each Class Member whose Class Notice is returned to the Settlement Administrator within (5) calendar days of the initial mailing of the Class Notices by the Settlement Administrator, or other such notice as ordered by the Court. (*Id.*) This procedure for providing notice is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Class Notice. (*Id.*)

48. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the claims involved, the terms of the settlement, and their options thereunder. (Exhibit 1, Settlement Agreement, Exhibit 1, Class Notice.) The Class Notice provides each Class Member's starting and ending dates of employment in a class position during the Class Settlement Period, the number of Qualified Workweeks calculated by the Settlement Administrator, and the Settlement Administrator's calculation of each Class Member's estimated Individual Settlement Payment. (*Id.*)

It provides further for a specific procedure to seek exclusion from the Class Members, disputing payments and Class Data, challenging the number of Qualified Workweeks and pay period data, and lodging objections to the settlement. (Exhibit 1, Settlement Agreement, Exhibit 1, Class Notice.) In the Class Notice, Class Members will also receive Class Counsel's contact information so they can speak to attorneys conversant with the legal and factual issues involved in this case, as well as the contact information for the Settlement Administrator. The efforts taken to ensure that Class Members receive the Class Notice and are well informed about the settlement are reasonable and provide the best notice practicable under the facts.

Qualifications and Adequacy of Class Counsel

49. D.Law (formerly known as Davtyan Law Firm) prosecutes wage and hour cases, including class actions and PAGA actions on behalf of employees and others who have had their rights violated. D.Law, either on its own or with co-counsel, is currently serving as plaintiffs' counsel of record in numerous wage and hour and employment class action and PAGA action cases pending in both state and federal court.

50. D.Law is well-qualified and has ample experience, knowledge, and resources to act as counsel and represent Plaintiff and the putative Class and PAGA Employees in this action. Our practice is exclusively focused on employment matters and representing plaintiffs in wage and hour actions with the same or similar causes of actions brought forth in the matter pending before this Court.

51. D.Law has litigated and successfully resolved many wage and hour class action cases involving failure to pay wages and derivative Labor Code claims and penalties. See e.g. De La Rosa v. The Coca Cola Company et al. (Superior Court of California in Napa, 17CV000787), Harvey v. Bed Bath & Beyond of California Limited Liability Company (Superior Court of California in Alameda, RG17885153), Paredes v. Bottling Group LLC et. al. (Superior Court of California in Kern), Ramirez v. Harris Ranch Beef Company (Superior Court of California in Fresno, 16CECG04103), Gates v. Gate Gourmet, Inc. et. al. (Southern District of California, 16-cv-01084-L-AGS), Hargrave v. Antelope Valley Hospital (Superior Court of California in Los Angeles, BC663252), Ramirez v. Milton Roy et. al. (Superior Court of California in Los Angeles, BC 632

276), Hawkins v. AvalonBay Communities (Superior Court of California in Santa Clara, 17CV316492), Jones Tharpe et al. v. Sprint Corporation et al. (Superior Court of California in Los Angeles, BC644645), Ortega et al. v. Nestle Waters North America, Inc. et al. (Superior Court of California in Los Angeles, BC623610), Schultz v. Jimbo's Natural Family, Inc. (Superior Court of California in San Diego, 37-2017-00022348-CUE-OE-CTL), Ambrose v. Victor Valley Global et al. (Superior Court of California in San Bernardino, CIVDS1709289), Puerta-Gildardo v. Real Time Staffing Services LLC et. al. (Superior Court of California in Los Angeles, BC565445), Vargo v. Pregis Innovative Packaging LLC (Superior Court of California in Tulare, 270836), Conlin v. Aegis Senior Communities LLC (Northern District of California, 17-cv-05534-LHK), Galarza v. Kloeckner Metals Corporation (Central District of California, 2:17-cv-04910-FMO), Estes v. L3 Technologies, Inc. et al. (Southern District of California, 3:17-cv-02356-H-JMA), Rowser v. Trunk Club, Inc. (Central District of California, 2:17-cv-05064-DSF-RAO), Leach v. The Claremont Colleges, Inc. (Superior Court of California in Los Angeles, BC686451), Vaesau v. PCT Enterprises, Inc. dba Precision Cabinets (Superior Court of California, County of Contra Costa MSC18-02404), Terry v. TF Louderback, Inc. dba Bay Area Beverage Company (Superior Court of the State of California, County of Contra Costa, MSC18-00859), Roach v. Westcare California, Inc. (Superior Court of California in Kern County, BCV-17-102367-SDS), Patton v. Church & Dwight Co., Inc. (Central District of California, EDCV 18-903-MWF (KKx)), Juarez v. ISL Employees, Inc. (Superior Court of California in Madera, MCV074787), Ferraro v. USC Verdugo Hill s Hospital, et al. (Superior Court of California in Los Angeles, 18STCV09463), Ford v. Account Control Technology, Inc., et al. (Superior Court of California in Los Angeles, 19STCV09369), Ornelas v. iStorage, et al. (Superior Court of California in San Francisco, CGC-18-571421), Martinez v. Ronpak, Inc. (Superior Court of California in Riverside, RIC1901307), Barrera et al. v. Exclusive Wireless, Inc. (Superior Court of California in Stanislaus, 9000687), Barajas v. Mancha Development Company LLC (Superior Court of California in Orange County, 30-2018-00974707-CU-OE-CXC), Prado v. IMAX Corporation dba IMAC Worldwide Home (Superior Court of California in San Bernardino, CIVDS1820265), Rodriguez v. ND Industries, Inc. (Superior Court of California in Los Angeles, 19STCV38096), Singletary v. Motel 6 Operating LP, et al. (Southern

District of California, 3:20-cv-0270-LAB-AHG), Quizon v. CF Watsonville East, LLC, et al. (Superior Court of California in Santa Cruz, 20CV01868), Stephenson v. Bakersfield Dodge, Inc. (Superior Court of California in Kern, BCV-20-102693), Bacerra v. Hugo Boss Retail, Inc. (Superior Court of California in San Diego, 37-2021-00002933-CU-OE-CTL), Walker v. Ariat International, Inc. (Superior Court of California in Alameda, HG19026439), Orr v. Petvet Care Centers (California) Inc. (Superior Court of California in Santa Clara, 19CV354063), Jimenez v. OEC Distribution Services, Inc. (Superior Court of California in San Bernardino, CIVDS1915743), Virdi v. Absolute Security International (Superior Court of California in San Bernardino, CIVDS 1909589), Raj v. First Transit, Inc (Superior Court of California in Sacramento, 34-2021-00295895-CU-OE-GDS), Marchbanks v. Torrid Administration, Inc. (Superior Court of California in San Diego, 37-2020-00008179-CU-OE-NC), among others.

52. I am Senior Counsel at D.Law where I manage the class action and PAGA settlement department. I was admitted to the California Bar in December 2008. I received my J.D. from Pepperdine University School of Law and B.S. from the University of Southern California. Since graduating from law school, I have dedicated virtually my entire career on the practice of employment law. I have practiced employment law from the plaintiff's side, from the defense side, and from an in-house position. I have significant experience specifically working on wage and hour class actions from the plaintiff's side as well as the defense side, with the majority of my experience coming from the plaintiff's side.

53. The collective experience of the D.Law attorneys in litigating employment wage and hour matters has been integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and generally negotiating fair and reasonable class and representative action settlements. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the constantly evolving substantive law (state and federal), as well as the procedural law of class and representative action litigation. In this action, the attorneys at D.Law are fully equipped to use the skills and knowledge developed over decades of prosecuting and defending wage and hour class actions to fairly and adequately represent the interests of the Class Members and PAGA Employees. Therefore, based on our resources, experience, and knowledge, the attorneys at D.Law are well-

qualified to act as class counsel and represent the Plaintiff and the putative Class Members and PAGA Employees in this action.

54. We understand the responsibilities owed as counsel to the class members and aggrieved employees we represent. The attorneys at D.Law thoroughly investigated the claims asserted in this action and have remained committed to dedicating the resources necessary to represent the Class Members and vigorously pursue their claims. Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. Based upon my experience and understanding of the claims and defenses in this action, I believe the Settlement is fair, adequate, and reasonable for the Settlement Class Members and PAGA Employees and all involved, and that the Settlement is well within the range of reasonableness that would permit it to be finally approved. I am not aware of any conflict of interest with Plaintiff or any other Class Member that would interfere with the duties as Class Counsel.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 25th day of March, 2025 in Glendale, California

Enoch J. Kim

EXHIBIT 1

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Melissa Rodriguez (SBN 352716)
m.rodriguez@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
880 E Broadway
Glendale, CA 91205
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

Attorneys for Plaintiff MARK A. FLETCHER,
on behalf of himself and others similarly situated

LITTLER MENDELSON, P.C.
Kurt Bockes (SBN 171647)
kbockes@littler.com
Valentina Wilson (SBN 347301)
vwilson@littler.com
101 Second Street, Suite 1000
San Francisco, CA 94105
Telephone: (415) 433-1940
Facsimile: (415) 399-8490
Attorneys for Defendants HEBREW HOME FOR AGED DISABLED;
SAN FRANCISCO CAMPUS FOR JEWISH LIVING; and
JEWISH HOME AND SENIOR LIVING FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

MARK A. FLETCHER, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. HEBREW HOME FOR AGED DISABLED, a California nonprofit corporation; SAN FRANCISCO CAMPUS FOR JEWISH LIVING, a California entity form unknown; JEWISH HOME AND SENIOR LIVING FOUNDATION, a California nonprofit corporation; and DOES 1 through 50,	Case No.: CGC-23-603795 <u>CLASS ACTION</u> **JOINT STIPULATION OF CLASS AND PAGA ACTION SETTLEMENT AGREEMENT** Original Complaint Filed: January 4, 2023 First Amended Complaint: March 4, 2023

Defendants.

Subject to the Court's approval, the Parties have entered into a Settlement Agreement pursuant to the terms and conditions in this Joint Stipulation of Class and PAGA Action Settlement Agreement ("Settlement Agreement") between Plaintiff MARK A. FLETCHER (hereinafter "Plaintiff"), on behalf of himself and the Settlement Class, and Defendants HEBREW HOME FOR AGED DISABLED DBA SAN FRANCISCO CAMPUS FOR JEWISH LIVING; JEWISH HOME AND SENIOR LIVING FOUNDATION ("Defendants" or "SFCJL"). The Parties request the Court to enter judgment subject to the Settlement Agreement's terms.

I. DEFINITIONS

1. "Action" or "Lawsuit" shall mean the Complaint entitled *Mark A. Fletcher an individual, on behalf of himself and others similarly situated v. Hebrew Home for Aged Disabled, a California nonprofit corporation; San Francisco Campus for Jewish Living, a California entity form unknown; Jewish Home and Senior Living Foundation, a California nonprofit corporation; and Does 1 through 50,* , filed on January 4, 2023, in San Francisco Superior Court and assigned Case No. CGC23603795, and the operative, First Amended Complaint ("FAC") filed on March 4, 2023. Plaintiff further agrees to amend the operative Complaint pending in the Superior Court of the State of California for the County of San Francisco if necessary to add class action allegations and to add causes of action for failure to pay sick pay and provide supplemental COVID leave. Therefore, in the event it is necessary, the "Action" will also include and encompass a Second Amended Complaint if and when it is filed.

2. "Class" shall include All non-exempt employees in California who are or previously were employed by Defendants HEBREW HOME FOR AGED DISABLED, SAN FRANCISCO CAMPUS FOR JEWISH LIVING, or JEWISH HOME AND SENIOR LIVING FOUNDATION, ("Defendants") during the Class Period, which is January 4, 2019 through the date of preliminary approval of the Settlement.

3. "Class Counsel" means the attorneys of record for the Class Representative and Class Members, *i.e.*, Emil Davtyan, Alvin B. Lindsay and Melissa Rodriguez from D.Law, 880 E

Broadway Glendale, CA 91205, and David Yeremian from David Yeremian & Associates, Inc., 535 N. Brand Blvd, Suite 705, Glendale, CA 91203.

4. "Class Counsel Award" means an award of attorneys' fees, expenses and costs granted to Class Counsel and paid from the Gross Settlement Amount. The parties have agreed Plaintiff will request approval from the Court of up to $166,666.67 in attorneys' fees and up to $15,000 in costs to comprise the Class Counsel Award.

5. "Class Data" means a database of information regarding Class Members that Defendants will collect from its electronic records and provide to the Settlement Administrator. The database will contain the following information: (1) the full name, last known address, and full social security number of all Class Members; and (2) the information necessary to determine the estimated settlement allocation to each Class Member, including the number of workweeks worked by each and every Class Member during the relevant Class Period, and the number of qualifying pay periods associated with each PAGA Employee during the PAGA Period.

6. "Class Members" means all individuals who are or were employed as non-exempt hourly employees of SFCJL in California at any time during the "Class Settlement Period." A Settlement Class Member is any individual who is a member of the Settlement Class (i.e. one who does not request exclusion from it).

7. "Class Settlement Period" shall mean the time period from January 4, 2019 through the date of preliminary approval of the Settlement (i.e. the date the Court enters the Order granting preliminary approval of this Settlement Agreement).

8. "Class Representative Service Award" (or "CRSA") is the amount that Class Counsel will request and the Defendant will not oppose and the Court approves as an enhancement award for distribution to Plaintiff as the named Class Representative for the Settlement Class. The amount of the enhancement award will not exceed Ten Thousand Dollars ($10,000.00) and will be requested in recognition of Plaintiff's efforts and risks in assisting with the prosecution of the Action and in return for executing a release as described below under "Released Claims by Plaintiffs." The CRSA will be requested in addition to and separate from Plaintiff's Individual Settlement Payment.

9. “Compensable Workweeks” means a reasonable estimate of weeks worked by Class Members during the Class Period based on Defendant’s records and used as a value to calculate Individual Settlement and the Individual PAGA Payments. Compensable workweeks shall include only those weeks an employee was actively employed as a non-exempt employee of Defendant.

10. “Complaint” means the operative Complaint on file in this Action.

11. “Court” means the Superior Court for the State of California, County of San Francisco.

12. “Defendants” means Hebrew Home for Aged Disabled dba San Francisco Campus for Jewish Living; and Jewish Home and Senior Living Foundation (often collectively referred to herein as “SFCJL”). During the course of finalizing the settlement agreement, Defendants began using the business name “The Campus” in addition to San Francisco Campus for Jewish Living.

13. “Defense Counsel” or “Counsel for Defendants” shall mean Kurt Bockes and Valentina Wilson of Littler Mendelson, P.C., 101 Second Street, Suite 1000 San Francisco, California 94105.

14. “Effective Date of the Settlement and Release” shall be the later of the effective date of the Settlement Agreement (i.e. the date the Order Granting Final Approval and Judgment are entered by the Court) and the date Defendant funds the Qualified Settlement Fund established by the Administrator with the Gross Settlement Amount.

15. “Final Approval Order” means the Court’s order granting final approval of the Settlement Agreement. “Final Judgment” means the Court’s final judgment to be entered concurrently with the Final Approval Order.

16. Individual Settlement Payment (or “ISP”) means the amount payable from the Net Settlement Amount to each Settlement Class Member. The Net Settlement Amount remaining after deductions from the Gross Settlement Amount will be paid to Settlement Class Members on a *pro rata* basis according to the number of workweeks they worked during the Class Settlement Period.

17. “Gross Settlement Amount” (or “GSA”) means the maximum sum to be paid by Defendants pursuant to this Settlement Agreement, which shall be no more than Five Hundred Thousand Dollars ($500,000.00). The GSA will include all payments to be made to Settlement Class

Members, the PAGA Payment, attorneys' fees and costs approved by the Court, the Settlement Administrator (as defined below) costs, and the enhancement award to Named Plaintiff Mark A. Fletcher. In no event shall Defendants be liable for the payment of any amounts exceeding the Gross Settlement Amount with the exception of the employer's share of payroll taxes due and payable as a result of this Settlement. The Gross Settlement Amount will be paid over an extended period of time pursuant to a timeline agreed upon by the Parties. Defendant will pay the settlement payments over a period of twelve (12) months. The payments will be spread out over four quarterly payments. The first payment will be paid within thirty (30) days of the Superior Court Judge approving the settlement (i.e. the date of entry of the Final Approval Order).

18. "Net Settlement Amount" (or "<u>NSA</u>") means the Gross Settlement Amount less Court-approved attorneys' fees, costs, enhancement award to Named Plaintiffs, PAGA Payment, and Settlement Administrator costs.

19. "Notice" means the Notice of Settlement of Class and PAGA Action in a form substantially similar to the form attached as <u>**Exhibit 1**</u> <u>(the "Notice")</u>.

20. "Notice Period" means the 45-day period from the mailing of the class settlement Notice for Settlement Class Members to file with the Court their objection to the Settlement or to indicate their decision to opt out of the class portion of the Settlement.

21. "LWDA" means the California Labor and Workforce Development Agency, which is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.* ("PAGA"), and it has delegated such authority to Plaintiff with regard to the claims made in this Action through the procedural mechanisms provided for by statute, and it will receive the LWDA portion of the PAGA Allocation.

22. "PAGA" means the California Labor Code Private Attorneys General Act of 2004.

23. "PAGA Payment" refers to the Twenty Thousand Dollars ($20,000.00) allocated from the Gross Settlement Amount as civil penalties to settle the PAGA claims asserted in the Action. 75% of the PAGA Payment ($15,000.00) will be payable to the LWDA and the remaining 25% ($5,000.00) will be payable to the PAGA Employees on a *pro rata* basis. The PAGA

Employees shall release the asserted PAGA claim individually and in their capacity representing the State of California and may not opt out of or object to the PAGA release.

24. "PAGA Settlement Payment" refers to the amount calculated by the Settlement Administrator to distribute to each member of the Aggrieved Employees from the 25% of the PAGA Payment allocated to individual settlement payments to the PAGA Employees. Any Class Member who opts out of the Settlement Class will nonetheless receive their PAGA Settlement Payment and be bound, to the extent allowed by law, by the LWDA's release of its claims to PAGA penalties under this Agreement. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Sup. Ct. (Angelo Dairy)* (2009) 46 Cal.4th 969 and *Cardenas v. McLane Foodservice, Inc.* (2011) 796 F.Supp.2d 1246, individuals otherwise meeting the definition of a Class Member who exclude themselves from the Settlement shall nonetheless receive a payment for the amount of each such individual's estimated share of the Aggrieved Employees' portion of the PAGA Payment and shall have released the PAGA claims.

25. "PAGA Employees" means the aggrieved non-exempt employees employed by Defendants who worked at least one pay period during the PAGA Period.

26. "PAGA Period" means the time period from January 4, 2022 through the date of entry of the Preliminary Approval Order.

27. "Parties" mean Plaintiff and Defendants, collectively, and "Party" shall mean either Plaintiff or Defendants, individually.

28. "Payment Ratio" means the respective Qualified Workweeks for each Class Member divided by the total Qualified Workweeks for all Class Members.

29. "Plaintiff" shall mean the named Plaintiff in this Lawsuit, Mark A. Fletcher.

30. "Preliminary Approval Date" means the date the Court enters an order granting preliminary approval of the Settlement Agreement.

31. "Qualified Settlement Fund" means the fund set up by the Settlement Administrator into which the GSA shall be deposited and disbursements from it shall be made. Defendants will fund the Qualified Settlement Fund by quarterly payments over the course of one year following the Final Approval Date until it is fully funded.

32. "Qualified Workweeks" means the number of workweeks in which a Class Member performed any work for Defendants in a non-exempt, hourly position during the Class Settlement Period. "Summary of Workweeks and Estimated Payment" is the information that will be included in the Class Notice that is sent to each Class Member that sets forth the number of Compensable Workweeks that Class Member worked as a non-exempt employee for Defendants in California during the Class Period, and the estimated payment he or she will receive.

33. "Class Released Claims" means any and all disputes, claims and/or causes of action for wages, statutory and civil penalties (but not PAGA penalties), monies, damages, liquidated damages, premiums, restitution, injunctive and declaratory relief, pre-judgment and post judgment interest, attorney's fees, and costs pleaded in the Action, Plaintiff's PAGA Notice Letter to the LWDA, and/or which reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Settlement Period. This includes, but is not limited to, any claims for: (1) failure to pay minimum wages under California Labor Code § § 1194, 1194.2,1197, and the applicable IWC Wage Order; (2) failure to pay wages and overtime under California Labor Code §§ 510, 1194, 1198, 1199, and the applicable IWC Wage Order; (3) meal period liability under California Labor Code §§ 512, 226.7, and the applicable IWC Wage Order; (4) Rest Break Liability Under California Labor Code §§ 226.7 and 512 and applicable IWC Wage Order; (5) failure to furnish accurate itemized statements under California Labor Code §§ 226(a) and 226(e); (6) violation of California Labor Code § 221; (7) failure to timely pay wages under California Labor Code §§ 204 and 210 and the applicable IWC Wage Order; (8) failure to pay all wages owed at termination of employment under California Labor Code § § 201, 202, 203, 1199, and the applicable IWC Wage Order; (9) failure to reimburse necessary business expenses under Labor Code § 2802, and the applicable IWC Wage Order; (10) violation of California Business and Professions Code § 17200 *et seq*. (11) failure to maintain records under California Labor Code § 1174; (12) failure to provide paid sick days and COVID-19 supplemental sick leave in violation of California Labor Code §§ 246, 248.1, 248.2, and 248.5; and with respect to the statutory and civil penalties claimed in the Action, whether under

California Labor Code § 558, or otherwise ("Class Released Claims") against the Released Parties (as defined below).

34. "Release Effective Date" means the date when both the Final Approval Order and Judgment have been entered and Defendants have fully funded the Qualified Settlement Fund established by the Administrator with the approved Gross Settlement fund amount ($500,000).

35. "Released Parties" is defined to include Hebrew Home for Aged Disabled dba San Francisco Campus for Jewish Living , Jewish Home and Senior Living Foundation, and any of its or their past, present, and future direct or indirect parents, subsidiaries, affiliates or related entities, holding companies, affiliated companies, partnerships, limited liability companies, as well as each of its or their past, present, and future officers, directors, employees, partners, members, managers, customers, subcontractors, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

36. "PAGA Released Claims" shall mean the release of the Released Parties by the LWDA, State of California, and by Plaintiff as a representative of and proxy for the LWDA from all claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq*. ("PAGA"), or otherwise, that were alleged in the PAGA Notice Letter, the Action, and/or claims which reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the PAGA Period. This includes, but is not limited to: (1) failure to pay minimum wages and failure to pay overtime wages for overtime hours worked under California Labor Code § 226.2, 510 1194(a), 1197, 1198 and applicable IWC Wage Order; (2) failure to provide meal-periods and rest-periods under California Labor Code §§ 512, 1198, 226.7, and applicable IWC Wage Order; (3) failure to provide accurate, itemized wage statements and failure to maintain employment records under California Labor Code §§ 226, 1174, 1198.5 and applicable IWC Wage Order; (4) failure to timely pay all wages owed, including semi-monthly and upon separation or termination, under California Labor Code §§ 201, 202, 203, 204, 226.2, 1197.5, 2926, and 2927; (5) failure to reimburse the necessary work related expenses, and Defendant's unlawful deductions from wages under California Labor Code §§ 221, 1197, 1197.1, 1198, 2802 and applicable IWC Wage Orders; (6) failure to provide

paid sick days and COVID-19 supplemental sick leave in violation of California Labor Code §§ 246, 248.1, 248.2, 248.5; and (7) background check violations pursuant to California Labor Code § 1024.5.

a. Upon the Effective Date of the Settlement Agreement, and following the final payment to fully fund the Qualified Settlement Fund, the effective date of the PAGA Released Claims will occur when the Administrator receives the final installment payment from Defendants to fully fund the Qualified Settlement Fund.

37. "Request for Exclusion" refers to a formal request to be excluded from the Settlement Agreement as described in the "Requests for Exclusion" section herein. PAGA Employees cannot exclude themselves from the PAGA Released Claims and will instead automatically receive their pro-rata share of 25% of the PAGA Payment.

38. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notices to Class Members, and the last date on which Class Members may submit requests for exclusion or objections to the Settlement Agreement.

39. "Settlement Agreement" means this Joint Stipulation of Class Action and PAGA Settlement Agreement.

40. "Settlement Administrator" means Apex Class Action ("Apex"), and Apex has provided a not to exceed quotation for $16,000.00 to complete Settlement Administration, including mailing the Class Notices and establishing and maintaining a Qualified Settlement Fund throughout administration and during the installment payment and funding and distribution processes, as well as other obligations and tasks discussed below.

41. "Settlement Class" or "Settlement Class Members" (or "SCM") means individuals who are or were employed as non-exempt hourly employees of SFCJL in California during the Class Settlement Period and does not request exclusion from it.

II. RECITALS

42. Class Certification. The Parties stipulate and agree to certification of a "Settlement Class" for the purposes of this Settlement Agreement only. In the event the Settlement Agreement is terminated or does not obtain court approval, class certification shall be vacated and the

Settlement Class shall be immediately decertified. The Parties stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this lawsuit or any lawsuit. Except as otherwise discoverable, neither this Settlement Agreement nor any ancillary documents, actions, statements, or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Lawsuit or any other action for any purpose whatsoever.

43. Procedural History. On January 4, 2023, Plaintiff filed a putative class action Complaint asserting claims against the Defendants, including claims for (1) Failure to Pay Minimum Wages and All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest Break Liability Under Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation Labor Code § 221; (7) Violation Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (10) Violation of California Business and Professions Code § 17200 *et seq*. On or about March 4, 2023 Plaintiff filed the FAC alleging the same claims in the original Complaint, and adding claims for civil penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698 *et seq*., that reasonably could have been premised on the facts, claims, and legal theories alleged in the Complaint and in the FAC. The Lawsuit was filed in San Francisco Superior Court.

44. Voluntary Exchange of Information. Before mediation, Plaintiff and Defendant engaged in a voluntary exchange of information concerning the claims and defenses set forth in the Action.

45. Mediation. On August 3, 2023, the Parties participated in a private mediation with Hon. Howard R. Broadman, a mediator with considerable experience mediating wage and hour class actions. This took place only after the Parties exchanged extensive informal information, documents, and data. At the conclusion of the mediation, Judge Broadman proposed a proposal of $500,000. The following week, the parties agreed to the proposal of $500,000 as to the class and PAGA settlement and further agreed to a Memorandum of Understanding memorializing the general terms of this Settlement Agreement. Plaintiff also agreed to modify the operative Complaint pending in

the Superior Court of the State of California for the County of San Francisco to add class allegations and to add failure to pay sick pay and provide supplemental COVID leave as causes of action.

46. Benefits of Settlement Agreement to Settlement Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate their disputes through trial and potential appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Lawsuit, both generally and in response to Defendants' defenses, and the difficulties in establishing damages for the Class Members. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate, and reasonable, and in the best interests of the SCMs.

47. Defendants' Reasons for Settlement Agreement. Defendants have concluded that further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of Defendants' time and resources have been and, unless this Settlement Agreement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff and the putative Class Members. Defendants have also taken into account the risks of further litigation in reaching its decision to enter into this Settlement Agreement. Although Defendants continue to contend that they are not liable for any of Plaintiff's claims, Defendants have agreed to settle along the terms set forth in this Settlement Agreement and fully resolve the Lawsuit.

48. Class Members' Claims. The Class Representative claims that his allegations have merit in regards to the putative Class Members. This Settlement Agreement is a compromise of disputed claims. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the putative Class Members or Class Counsel as to the merits of the claims asserted.

49. Defendants' Defenses. Defendants claim that the Released Claims have no merit. This Settlement Agreement is a compromise of disputed claims. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against Defendants as to the merits of the claims asserted.

III. TERMS OF SETTLEMENT AGREEMENT

50. Settlement Agreement Consideration by Defendants. Defendants shall pay the GSA, which shall fund the Individual Settlement Payments, the Class Representative Service Award, the Class Counsel Award, PAGA Payment, and the Settlement Administrator Costs, as specified in this Agreement. In no event shall Defendants be liable for the payment of any amounts exceeding the GSA with the exception of the employer's share of payroll taxes due and payable as a result of this Settlement.

51. Release by All Settlement Class Members. Upon the Effective Date, each Class Member (including Plaintiff) who does not timely submit a valid Request for Exclusion, shall, for the Class Period, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, fully release and forever discharge the Released Parties from the Class Released Claims.

52. General Release of Claims By Plaintiff. In addition to release of the Settlement Class Members' Released Claims, Plaintiff and all persons purporting to act on Plaintiff's behalf or purporting to assert a claim under or through him shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all claims, known or unknown, asserted and unasserted, that he has or may have had against Defendants or any of the Released Parties from the beginning of time through the date Plaintiff signs the Settlement Agreement, including, but not limited to, any claims concerning Plaintiff's employment and/or the termination of his employment with Defendants, any claims for wages, bonuses, severance pay, employment benefits, stock options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful retaliation, reasonable accommodation, violation of public policy, wrongful termination, credit checks, or damages of any kind whatsoever, arising out of any common law torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on any affiliated entity's right to terminate the employment relationship, or any federal, state, local, or other governmental statute, executive order, regulation or ordinance, or common law, or any other basis whatsoever, to the fullest extent provided by law.

Named Plaintiff shall be deemed to have, and by operation of the final approval of the Settlement by the Court shall have, expressly waived, and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiff, for himself, has read Section 1542 of the Civil Code of the State of California, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

Plaintiff understands that Section 1542 gives the right not to release existing claims of which he is not now aware, unless Plaintiff voluntarily chooses to waive this right. Having been so apprised, Plaintiff nevertheless voluntarily waives the rights described in Section 1542 and elects to assume all risks for claims that now exist in his favor, known or unknown. The release of the claims of Plaintiff is a condition precedent to enforcement of this Settlement Agreement.

53. Plaintiff understands he has at least 5 business days from the date he receives this Agreement to consider the terms of this Agreement, including whether to sign this Agreement ("Consideration Period"). If Plaintiff chooses to sign this Agreement before the Consideration Period ends, Plaintiff represents that it is because he freely chose to do so after carefully considering its terms. Plaintiff acknowledges that he has read and fully understand the terms of this Agreement. Defendants advise Plaintiff, in writing, to consult with an attorney of his choice regarding the terms of this Agreement prior to signing this Agreement.

54. This Agreement, including the General Release by Plaintiff shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits, or any other claim or right that as a matter of law cannot be waived or released. Moreover, regardless of whether or not Plaintiff signs this Agreement, nothing in any Defendant agreement, policy, or practice, including this Agreement (i) limits or affects Plaintiffs' right to challenge the

validity of this Agreement under the ADEA or the Older Worker Benefit Protection Act (OWBPA), (ii) prevents Plaintiff from communicating with, filing a charge or complaint with; providing documents or information voluntarily or in response to a subpoena or other information request to; or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, the Occupational Safety and Health Administration, law enforcement, or any other any federal, state or local agency charged with the enforcement of any laws, or from testifying, providing evidence, responding to a subpoena or discovery request in court litigation or arbitration, or (iii) prevents a non-management, non-supervisory employee from engaging in protected concerted activity under Section 7 of the NLRA or under similar state law such as joining, assisting, or forming a union, bargaining, picketing, striking, or participating in other activity for mutual aid or protection, or refusing to do so; this includes using or disclosing information acquired through lawful means regarding wages, hours, benefits, or other terms and conditions of employment, except where the information was entrusted to the employee in confidence by the Defendant as part of the employee's job duties. In addition, nothing in this Agreement shall be construed to prevent the disclosure of factual information related to any acts of sexual assault, sexual harassment, workplace harassment or discrimination, failure to prevent an act of workplace harassment or discrimination, or act of retaliation against a person for reporting harassment or discrimination related to the case, prevents Plaintiff from discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination or any other conduct that Plaintiffs have reason to believe is unlawful; or waive Plaintiff's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the Defendant, or on the part of the agents or employees of the Defendant, when Plaintiff has been required or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature. In addition, nothing in this Agreement limits or affects Plaintiff's right to disclose or discuss sexual harassment or sexual assault disputes. By signing this Agreement Plaintiff is waiving his right to recover any individual relief (including any backpay, frontpay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on Plaintiff's behalf by any third party, except for any right Plaintiff may have to receive a payment or award from a government agency (and not the Defendants) for information provided to the government agency or where otherwise prohibited.

55. PAGA Release. Upon the Effective Date, the Labor Workforce Development Agency, State of California, and Plaintiff as a representative of and proxy for the LWDA, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the PAGA Released Claims.

56. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events:

a. The Court enters an order granting preliminary approval of the Settlement Agreement;

b. The Court enters an order granting final approval of the Settlement Agreement and a Final Judgment;

c. The Final Effective Date occurs; and

d. Defendants do not invoke their right to revoke the Settlement Agreement as described herein ("Option to Revoke or Modify Settlement Agreement").

56. Nullification of Settlement Agreement: Subject to the obligation(s) of mutual full cooperation set out in this Settlement Agreement, either Party may terminate this Settlement if after submitting to settle any Court declines to enter the preliminary approval order, the final approval order, or judgment in substantially the form submitted by the Parties, or if the Stipulation of Settlement as agreed otherwise does not become final. The terminating Party shall give to the other Party (through its/his counsel) written notice of its/his decision to terminate no later than fourteen (14) calendar days after receiving notice that one of the enumerated events has occurred. Termination shall have the following effects:

a. The MOU and this Settlement Agreement shall be terminated and shall have no force or effect, and no Party shall be bound by any of its terms.

b. In the event the Settlement Agreement is terminated, Defendants shall have no obligation to make any payments to any party, class member, or attorney.

c. The order approving the filing of the Amended Complaint, the preliminary approval Order, the final approval order, and judgment, including any order of class certification, shall be vacated.

d. The Stipulation of Settlement and all negotiations, statements, and proceedings relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions prior to the Settlement.

e. Except as otherwise discoverable, neither the MOU nor any ancillary documents, actions, statements, or filings in furtherance of settlement (including all matters associated with the mediation) shall be admissible or offered into evidence in the Lawsuit or any other action for any purpose whatsoever.

57. Certification of the Settlement Class. The Parties stipulate to conditional class certification of the Settlement Class for the Class Settlement Period for purposes of the Settlement Agreement only, and to agree that Plaintiff Mark A. Fletcher shall be appointed as Class Representative, and that D.Law, Inc. and David Yeremian & Associates, Inc. shall be appointed Class Counsel. Defendant contends that the facts do not justify class certification under the governing legal standards. The trial court has not ruled on class certification in the underlying litigation. Consequently, a "Settlement Class" has been established for purposes of administration and resolution of this matter only. It is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that class certification is appropriate. If the Court does not grant either preliminary or final approval of this settlement, then the parties revert to their previous positions and Defendants will not stipulate to class certification.

58. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and SCMs are not relying on any statement or representation by the Parties in this regard. SCMs understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the ISPs or PAGA Payments they receive,

and that they will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of their ISPs and PAGA Payments.

59. Circular 230 Disclaimer. Each Party to this Settlement Agreement acknowledges and agrees that no provision of this Settlement Agreement, and no written communication or disclosure between the Parties or their attorneys, was intended to be relied upon as tax advice within the meaning of United States Treasury Department circular 230 (31 CFR part 10, as amended); and that each Party has relied exclusively on their own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement Agreement; and that each Party is not entitled to rely upon any communication or disclosure by any attorney or advisor to avoid any tax penalty.

60. Preliminary Approval Motion. Plaintiff will move the Court to grant preliminary approval of this class action Settlement for settlement purposes only, certifying the Settlement Class for settlement purposes only, and setting a date for a final approval hearing. Both Parties agree to work diligently and cooperatively to have this matter presented to the Court for preliminary approval as efficiently as possible.

61. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for:

a. Calculating the Qualified Workweeks, Payment Ratio, and the ISP for each Settlement Class Member, and the PAGA Settlement Payment for each PAGA Employee;

b. processing and mailing payments to the Class Representative, Class Counsel, LWDA, PAGA Employees and SCMs;

c. printing and mailing the Notices to the Class Members as directed by the Court;

d. receiving and reporting objections, opt outs, Requests for Exclusion, and Notices of Objection;

e. deducting all legally required taxes from the ISPs and distributing tax forms;

f. processing and mailing any tax payments to the appropriate state and federal taxing authorities;

g. providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement;

h. and other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendants and Defense Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendants and Defense Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the ISPs or any other distribution of monies contemplated by this Settlement Agreement.

62. <u>Notice Procedure</u>.

a. <u>Class Data.</u> The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data or any of its information for any purpose other than to administer this Settlement Agreement. Defendants shall provide the Settlement Administrator with the Class Data to prepare and mail the Notices to the Class Members. This shall take place within thirty (30) calendar days after the Preliminary Approval by the Court of a stipulated settlement.

b. <u>Notices</u>.

i. The Notice of Class Action and PAGA Settlement mailed out to Class Members (the "Notice") shall be in a form substantially similar to the form attached as Exhibit 1. The Notice shall inform Class Members to notify the Settlement Administrator of their current mailing address where the ISP should be mailed following the Effective Date. The Notice shall include the release to be given by each SCM in exchange for the ISP.

ii. The Notice shall also provide each Class Member's starting and ending dates of employment in a class position during the Class Settlement Period, the number of Qualified Workweeks calculated by the Settlement Administrator, and the Settlement Administrator's calculation of each Class Member's estimated ISP.

iii. The Notice's mailing envelope shall include the following language: "IMPORTANT LEGAL DOCUMENT- YOU MAY GET MONEY FROM A CLASS ACTION SETTLEMENT AGREEMENT; A PROMPT REPLY IS REQUIRED TO PRESERVE YOUR RIGHTS."

c. Notice By First Class U.S. Mail. No later than fourteen (14) calendar days after receiving the Class Data from Defendants as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member.

d. Undeliverable Notices. Any Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved. One supplemental class settlement notice will be mailed to each member of the Settlement Class whose notice is returned to the Settlement Administrator within (5) calendar days of the initial mailing of the notices by the Settlement Administrator, or other such notice as ordered by the Court. If any Notices sent to Class Members currently employed by Defendants are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall notify Defendants. Defendants will request that the currently employed Class Member provide a corrected address to the Defendants to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.

e. Disputes Regarding ISPs. Class Members will have the opportunity, should they disagree with the estimated number of Qualified Workweeks stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. If there is a dispute, the

Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any ISP under the terms of this Settlement Agreement, and that determination shall be binding upon the Class Member and the Parties.

f. Disputes Regarding Administration of Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

g. Requests for Exclusion.

i. The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement are required to submit a written Request for Exclusion by the Response Deadline. The written Request for Exclusion must state that the Class Member wishes to exclude himself or herself from the Settlement Agreement and (1) must contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; (2) must be signed by the Class Member; (3) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address; and (4) should identify this action somehow as *Mark A. Fletcher v. Hebrew Home for Ages Disabled*, *et al.* Case No. CGC-23-603795, filed in the Superior Court of California, County of San Francisco.

ii. The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be Settlement Class Members ("SCMs") who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Lawsuit, if the Settlement Agreement is approved by the Court.

iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendants or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion. Class Members who are also PAGA Employees are not able to request exclusion from the PAGA Payment and they will release the Released PAGA Claim whether they opt-out of the Settlement or not.

iv. No later than five (5) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.

v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion from the Settlement Agreement.

h. Objections.

i. The Notice shall state that SCMs who wish to object to the Settlement Agreement should mail to the Settlement Administrator a written statement of objection ("Notice of Objection") by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.

ii. SCMs who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Agreement Fairness Hearing in order to have their objections heard by the Court. The Notice of Objection should be signed by the SCM and state the case name and number, the name and address of the SCM, the last four digits of the SCM's Social Security number and/or Employee ID number, the basis for the objection, and if the SCM intends to appear at the Final Approval/Settlement Agreement Fairness Hearing. Class members may also object by appearing at the final approval hearing and presenting their objections.

iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage SCMs to object to the Settlement Agreement or appeal from the Order and Final Judgment.

iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement.

v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendants may file oppositions to Notices of Objection no later than nine (9) court days prior to the date of the Final Approval/Settlement Agreement Fairness Hearing.

vi. Defendants shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel, or SCMs arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

63. <u>Funding and Allocation of the Gross Settlement Amount</u>. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and instructions below, Defendants will deposit the GSA into a Qualified Settlement Fund to be established by the Settlement Administrator.

64. <u>Funding Due Date.</u>

a. The Settlement Administrator shall set up a <u>Qualified Settlement Fund and Account</u> ("QSA") which Defendants shall have the option of making payments into towards the GSA prior to the due date for those payments. Any portion of the GSA which remains unpaid as of entry of the Order granting final approval will be paid over a period of twelve (12) months. The payments will be spread out over four quarterly payments. The first payment will be paid within thirty (30) days of the entry of the Final Approval Order. Any interest which accrues on the GSA sums paid into the QSA prior to distribution by the Settlement Administrator will become part of the NSA.

b. Individual Settlement Payments. ISPs shall be paid from the NSA and shall be paid pursuant to the following formula:

i. Calculation of Individual Settlement Payments ("ISPs"). Using the Class Data, the Settlement Administrator will calculate the total Qualified Workweeks for all SCMs. The respective Qualified Workweeks for each SCM will be divided by the total Qualified Workweeks for all SCMs, resulting in the Payment Ratio for each individual SCM.

ii. Each SCM's Payment Ratio will then be multiplied by the NSA to calculate each SCM's estimated ISP. The ISP will be provided only to the individual SCM. Each ISP will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Each Settlement Class Member's Individual Payment shall be treated as wages, penalties, liquidated damages, and interest, with wages not to exceed 20% and penalties, liquidated damages, and interest not to exceed 80%.

iii. Calculation of PAGA Payments: The parties have allocated $20,000 to the PAGA Payment, with $15,000 (75% of the allocated PAGA Payment) being paid to the California Labor and Workforce Development Agency, and $5,000 (25% of the allocated PAGA Payment) will remain in the NSA and be distributed as described in this Settlement Agreement. The PAGA Individual Payment paid to each of the PAGA Employees shall be calculated by dividing 25% of the approved PAGA Payment by the number of Qualified Workweeks for all PAGA Employees during the PAGA Period and then multiplying the result by the number of Qualified Workweeks for each PAGA

Employee during the PAGA Period. Even if a Settlement Class member determines to opt out of the Settlement, they will receive their pro rata portion of the $5,000 employee component of the PAGA Payment, as aggrieved employees cannot opt-out of the PAGA penalty claim. *See, e.g.*, *Robinson v So. County Oil* (2020) 53Cal.App.476).

iv. Tax Allocation. For tax purposes, each ISP shall be allocated as follows: 20% as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings, and 80% as penalties, liquidated damages, and interest for which an IRS Form 1099 will be issued.

v. Mailing. After the Effective Date of the Settlement occurs, and after Defendants have made the final installment payment to the Qualified Settlement Fund/QSA to fully fund it with the Gross Settlement Amount, then within fifteen (15) calendar days of that final funding date, the Administrator will mail ISPs by regular, First Class, U.S. Mail to each SCM.

vi. Uncashed Checks. All funds represented by uncashed checks remaining in the Net Settlement Amount shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500, *et seq.,* for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to Settlement Class Members, whether or not they all cash their Settlement Checks. Therefore, Defendants will not be required to pay any interest on such amounts.

c. Class Representative Service Award ("**CRSA**").

i. Defendants agree not to oppose or object to a Class Representative Service Award of up to ten thousand dollars ($10,000) to Plaintiff from the GSA for his efforts in prosecuting the Action and obtaining the Settlement on behalf of the Class, the State of California, and PAGA Employees. The Parties agree that Plaintiff's release under the Settlement will include a full general release with California Civil Code Section 1542 waiver, in exchange for the enhancement award.

ii. The Settlement Administrator shall pay the CRSA to Plaintiff from the GSA no later than fifteen (15) calendar days after the Effective Date. Any portion of the requested CRSA that is not awarded to the Class Representative shall become part of the NSA.

iii. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Plaintiff for the CRSA. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the CRSA and shall hold harmless Defendants and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the CRSA.

iv. If the Court reduces or does not approve the requested CRSA, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.

d. <u>Class Counsel Award</u>.

i. In consideration for settling the Lawsuit and for all Released Claims to the Released Parties, as well as the General Release of claims by Plaintiff, Class Counsel intends to apply for an award of attorneys' fees not to exceed one-third of the GSA ($166,666.67), including any interest, plus reasonable costs/expenses not to exceed fifteen thousand dollars ($15,000), from the GSA. Any reduction by the court of Class Counsel's requested attorney's fees and/or reasonable costs/expenses shall not be sufficient grounds to void the Settlement.

ii. Class Counsel, Plaintiff and the SCMs will not apply to the Court for any additional payment of attorney fees and costs, or for an increase in the GSA. The Parties agree that, over and above the Court-approved Class Counsel

Award, each of the Parties, including all SCMs, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, or prosecution of the Lawsuit; the negotiation, execution, or implementation of this Settlement Agreement; and/or the process of obtaining, administering, or challenging an Order Granting Preliminary Approval and/or Final Approval.

iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the NSA and shall be distributed to SCMs as provided in this Settlement Agreement.

iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the GSA no later than fifteen (15) calendar days after the Effective Date.

v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.

vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to void the Settlement Agreement and the Settlement Agreement will remain binding.

e. PAGA Payment. Twenty Thousand Dollars ($20,000) shall be allocated from the GSA shall be allocated as civil penalties to settle the PAGA claims asserted. The Settlement Administrator shall pay seventy-five percent (75%) of the $20,000 payment, or $15,000, to the California Labor and Workforce Development Agency (the "PAGA Payment") no later than twenty-five (25) calendar days after the Effective Date. Twenty-five (25%) of the remaining amount of the $20,000 payment, or $5,000, will be payable to the PAGA Employees. The PAGA Employees shall release the PAGA Released Claims and may not opt out of or object to the PAGA settlement.

f. Settlement Administrator Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement Agreement from the MSA. The Settlement Administrator, Apex, has provided a not to exceed quotation for administration for sixteen thousand dollars ($16,000). The Settlement Administrator shall be paid the Settlement Administrator Costs no later than fifteen (15) calendar days after Defendants provide the full GSA amount to the Settlement Administrator for disbursement under this Settlement Agreement.

60. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, the execution of necessary documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administrator process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Class Counsel will also notify Defense Counsel if subpoenaed or upon receipt of any other request for documents or information regarding any other lawsuit filed, or potential lawsuit, against the Released Parties that covers or includes any SCMs and the Released Claims.

61. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval/Settlement Agreement Fairness Hearing. The Preliminary Approval Order shall provide for the Notice of Class Action and PAGA Settlement to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement and the proposed Notice.

62. Final Approval Motion. At the earliest practicable time following the expiration of the Response Deadline, Plaintiff shall file with the Court a Motion for Order Granting Final Approval and Entering Judgment, requesting final approval of the Settlement Agreement and a determination of the amounts payable for the CRSA, the Class Counsel Award, the PAGA Payment, and the Settlement Administrator Costs.

a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of timely requests for exclusion, the number of Notices of Objections received, the amount of the average, highest, and lowest ISP, the Settlement Administrator Costs, and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.

b. Final Approval Order and Judgment. The Parties shall present an Order Granting Final Approval of Class Action and PAGA Settlement Agreement to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.

63. Option to Revoke or Modify Settlement Agreement.

a. Defendants represent that, as of November 28, 2023, there are 1,452 current and former employees who satisfy the Class member definition. If 10% or more of that number of Settlement Class Members timely opt out of the class portion of the Settlement, Defendant shall have the sole and absolute discretion to rescind/void the Settlement Agreement within twenty (20) days after receiving from the Settlement Administrator the final list of opt-outs. Defendant agrees to meet and confer in good faith with Class Counsel before rescinding or voiding the Settlement Agreement. If Defendant chooses to terminate the Settlement Agreement under this provision, it shall be responsible to pay the Settlement Administrator's fees and costs incurred to that point.

b. Defendant represents that, as of November 28, 2023, there are 1,452 current and former employees who satisfy the Class member definition. If it is determined that the number of Class Members exceeds 1,598 as of the filing of the initial motion for preliminary approval of the Settlement (i.e. a 10% increase), then, at its option, Defendant may elect to (a) increase the Gross Settlement Amount by the same number of percentage points above 10% by which the actual number of Class Members exceeds 1,598 (for example, if such increase in Class Members is 15% over 1,452 Class Members, the Gross Settlement Amount will increase by 5%), or (b) end the Class Period on the date on which the number of Class Members reaches 1,598.

64. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate and use their best efforts to effect the Court's approval of the Motions for Preliminary and Final Approval of the Settlement Agreement, and entry of Judgment.

65. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval/Settlement Agreement Fairness Hearing to be conducted by the Court.

66. No Effect on Employee Benefits. Amounts paid to Plaintiff or other SCMs pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or SCMs.

67. Exhibits and Headings. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and shall not in any way affect the meaning or interpretation of this Settlement Agreement.

68. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest and signed by the Parties or their successors-in-interest.

69. Entire Settlement Agreement. This Settlement Agreement and its exhibits constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibits.

70. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendants represents and warrants that they are authorized to sign this Settlement Agreement on behalf of

Defendants. Plaintiff represents that he is authorized to sign this Settlement Agreement and that he has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.

71. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

72. California Law Governs. All terms of this Settlement Agreement and its exhibits, and any disputes arising hereunder shall be governed by and interpreted according to California law.

73. Counterparts. This Settlement Agreement may be executed electronically via DocuSign or other electronic format in one or more counterparts which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts. Copies, including scanned copies of this Agreement, including electronic copies in PDF format that may be furnished via email, and the signatures (electronic or otherwise) contained therein, shall be as effective as the original Agreement.

74. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Lawsuit and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.

75. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.

76. Waiver of Certain Appeals. The Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement and entering of Final Judgment as provided herein, unless the Court modifies the Settlement Agreement.

77. No Admissions by the Parties. Plaintiff alleges that the Released Claims have merit, while Defendants contend that they lack merit. This Settlement Agreement is a compromise of disputed claims. Nothing contained in this Settlement Agreement, no documents referred to herein, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Defendants or Plaintiff as to the merits or lack thereof of the claims asserted.

78. Notice of Settlement Agreement to LWDA. Plaintiff will provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(l)(2).

IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement is voluntarily executed by the Parties and their attorneys as of the dates noted.

IT IS SO AGREED:

Dated: 09/21/2024

DocuSigned by:
893091FD427A440...
Mark A. Fletcher
Plaintiff

Dated: 09/26/2024

David Yeremian
Alvin B. Lindsay
D.LAW, INC.; DAVID YEREMIAN & ASSOCIATES, INC.
Attorneys for Plaintiff; Approved as to form

Dated: ____________________

____
Defendants

Dated: ____________________

____
Kurt Bockes
Valentina Wilson
LITTLER MENDELSON, P.C.
Attorneys for Defendants Approved as to form

76. Waiver of Certain Appeals. The Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement and entering of Final Judgment as provided herein, unless the Court modifies the Settlement Agreement.

77. No Admissions by the Parties. Plaintiff alleges that the Released Claims have merit, while Defendants contend that they lack merit. This Settlement Agreement is a compromise of disputed claims. Nothing contained in this Settlement Agreement, no documents referred to herein, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Defendants or Plaintiff as to the merits or lack thereof of the claims asserted.

78. Notice of Settlement Agreement to LWDA. Plaintiff will provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(l)(2).

IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement is voluntarily executed by the Parties and their attorneys as of the dates noted.

IT IS SO AGREED:

Dated: ____________________

____
Mark A. Fletcher
Plaintiff

Dated: ____________________

____
David Yeremian
Alvin B. Lindsay
D.LAW, INC.; DAVID YEREMIAN & ASSOCIATES, INC.
Attorneys for Plaintiff; Approved as to form

Dated: 9/13/24

K Beumer
Defendants

Dated: 9/16/2024

Kurt R. Bockes
Kurt Bockes
Valentina Wilson
LITTLER MENDELSON, P.C.
Attorneys for Defendants Approved as to form

EXHIBIT 1

Mark A. Fletcher v. Hebrew Home for Aged Disabled, et al.
San Francisco County Superior Court Case No. CGC-23-603795

A court has authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
Your legal rights are affected whether you act or do not act.

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT

To: All non-exempt employees in California who are or previously were employed by Defendants HEBREW HOME FOR AGED DISABLED dba SAN FRANCISCO CAMPUS FOR JEWISH LIVING, and JEWISH HOME AND SENIOR LIVING FOUNDATION, ("Defendants") during the Class Period, which is January 4, 2019 through the date of preliminary approval of the Settlement (the "Class").

YOU MAY BE ELIGIBLE TO RECEIVE PAYMENT FROM THE CLASS AND PAGA SETTLEMENT DESCRIBED IN THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	To receive a settlement payment, you do not need to do anything. Your payment will be mailed to you, automatically, approximately 14 months after the Court grants final approval to the settlement and after the settlement fund has been fully funded by Defendants. Please *keep a current address on file with the Settlement Administrator to ensure receipt of your check*.
CHANGE CONTACT AND ADDRESS INFORMATION	Update your address with the Administrator to ensure your check is sent to the correct address.
EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT(OPT OUT) BUT NOT THE PAGA SETTLEMENT	If you do not want to participate in the class settlement, you may exclude yourself (opt out) of the class portion of the settlement. If you exclude yourself from the class settlement, you will not receive any payment from the Settlement proceeds. This is the only option that allows you to pursue your own claims (in your own lawsuit) against Defendants about the legal claims in this case. However, even if you exclude yourself from the class settlement, you will still receive a portion of the PAGA settlement and be bound by it. You cannot opt-out of the PAGA portion of the proposed Settlement.
OBJECT	Write to the Court and object to the terms of this Settlement. You can also appear in person at final approval hearing to object to the Settlement.

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**

- **HEBREW HOME FOR AGED DISABLED dba SAN FRANCISCO CAMPUS FOR JEWISH LIVING, AND JEWISH HOME AND SENIOR LIVING FOUNDATION WILL NOT RETALIATE IN ANY MANNER AGAINST ANYONE FOR PARTICIPATING OR NOT PARTICIPATING IN THIS SETTLEMENT.**

BACKGROUND ON THE LAWSUIT

1. **Why did I get this notice?**

A settlement has been reached in this class and representative action lawsuit. You received this notice because Defendants' records identify you as someone who worked for Defendants in California as a non-exempt hourly employee at any time from January 4, 2019 through the date of preliminary approval of the Settlement, making you a "Class Member" during the "Class Settlement Period." The settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys' General Act ("PAGA"). If you are a Class Member, you are also a "PAGA Member" during the "PAGA Period," which is January 4, 2022 through the date of entry of the Order granting preliminary approval to the Settlement. The purpose of this Notice is to explain the lawsuit, the pending Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Superior Court of the State of California, County of San Francisco, and the case is known as *Mark A. Fletcher v. Hebrew Home for Aged Disabled, et al.* – Case No. CGC-23-603795 ("Action" or "Lawsuit"). There was a hearing on ____________, 2025 in San Francisco County Superior Court. The Court preliminarily approved the Settlement and directed that you receive this notice. The Court will hold a Final Approval hearing concerning the proposed settlement on ___________, 2025 at _______, in Department ___ of the San Francisco County Superior Court located at 400 McAllister St., San Francisco, CA 94102. The Final Approval Hearing may be continued to another date without further notice.

2. **What is this Class and PAGA Lawsuit about?**

On January 4, 2023, Plaintiff Mark A. Fletcher initiated this wage and hour class and representative action against Defendants alleging (1) failure to pay minimum wages under California Labor Code § § 1194, 1194.2,1197, and the applicable IWC Wage Order; (2) failure to pay wages and overtime under California Labor Code §§ 510, 1194, 1198, 1199, and the applicable IWC Wage Order; (3) meal period liability under California Labor Code §§ 512, 226.7, and the applicable IWC Wage Order; (4) Rest Break Liability Under California Labor Code §§ 226.7 and 512 and applicable IWC Wage Order; (5) failure to furnish accurate itemized statements under California Labor Code §§ 226(a) and 226(e); (6) violation of California Labor Code § 221; (7) failure to timely pay wages under California Labor Code §§ 204 and 210 and the applicable IWC Wage Order; (8) failure to pay all wages owed at termination of employment under California Labor Code § § 201, 202, 203, 1199, and the applicable IWC Wage Order; (9) failure to reimburse necessary business expenses under Labor Code § 2802, and the applicable IWC Wage Order; (10) violation of California Business and Professions Code § 17200 *et seq.*; and (11) failure to maintain records under California Labor Code § 1174. The First Amended Complaint filed on March 9, 2023, alleges the same claims in the original complaint, adding an additional claim against Defendants for penalties under the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698. The Second Amended Complaint filed on _________ alleges the same claims as the First Amended Complaint and adds claims for failure to provide sick pay and COVID-19 supplemental sick leave. Plaintiff's class and representative claims are on behalf of all current and former non-exempt employees who worked for Defendants in California during the Class Period. Defendants deny all allegations in the Lawsuit and contend that it has fully complied with the California Labor Code. The Settlement is not an admission of any wrongdoing by Defendants or an indication that any law was violated or that this case was suitable for class or representative treatment.

On August 3, 2023, through arms-length negotiations at a mediation with an experienced wage and hour mediator, Hon. Howard R. Broadman, the Parties reached a Class and PAGA Settlement subject to Court approval.

3. Why is there a settlement?

The Court has not decided in favor of Plaintiff Mark A. Fletcher, or in favor of Defendants, or made any decision as to whether this case could proceed on a class or representative basis. There was no trial. Instead, both sides agreed to a no-fault settlement of the Lawsuit. The Parties reached a settlement in order to avoid the risk and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate and in the best interest of the class members to whom it applies given the outcome of their investigation, the consumption of time and resources required in connection with further litigation, and the uncertainty in the law governing some of the claims presented. Although Defendants dispute Plaintiff's claims, Defendants have also concluded that further litigation would be protracted and expensive and would also divert resources and management and employee time.

4. Who are the Parties in this Lawsuit?

Plaintiff Mark A. Fletcher alleges he was employed by Defendants as an hourly employee at Defendants' facilities.

5. Who are the Attorneys for the Parties?

Counsel for Plaintiff and the Class

D.LAW, INC.
Emil Davtyan, Esq.
Alvin Lindsay, Esq.
Melissa Rodriguez, Esq.
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian Esq.
david@yeremianlaw.com
880 E Broadway
Glendale, CA 91205
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

Counsel for Defendants

LITTLER MENDELSON, P.C.
Kurt Bockes, Esq.
Valentina Wilson, Esq.
101 Second Street, Suite 1000,
San Francisco, California, 94105

THE TERMS OF THE SETTLEMENT

6. What is the Settlement Amount?

The proposed Settlement provides for the "Gross Settlement Amount", or "GSA", of $500,000.00 (referred to as the "Settlement Amount"). From the Settlement Amount, Class Counsel will apply to the Court for attorneys' fees of $166,666.67 and $15,000.00 in costs; a Class Representative Enhancement Award of $10,000.00 to Plaintiffs Mark A. Fletcher for his work and efforts prosecuting this case); a PAGA Payment of $20,000.— ($15,000.00 payment to the California Labor Workforce Development Agency ("LWDA")and $5,000.00 to be distributed to the "aggrieved" employee group); and settlement administration expenses to Apex Class Action, estimated at $16,000.00. The exact amount of the attorneys' fees, litigation costs, class representative service payment, and settlement administration expenses will be determined by the Court at the Final Approval hearing.

The remaining portion of the Settlement Amount, the "Net Settlement Amount" or the "NSA", is currently estimated to be approximately **$272,333.33**. The Net Settlement Amount will be apportioned and paid out as Individual Settlement Payments to the Settlement Class Members, who are the Class Members who do not request to be excluded ("opt out") from the settlement.

7. How will the Individual Settlement Payments to Settlement Class Members be calculated?

Settlement Class Members will receive Individual Settlement Payments as a proportional amount of the Net Settlement Amount. **A claim form is not required**. Class Members who opt out of the class settlement will not receive an Individual Settlement Payment and will not be bound by the class portion of this Settlement.

Each Settlement Class Member's Individual Settlement Payment will be a pro-rata share of the Net Settlement Amount. Defendants and the Settlement Administrator will calculate the total Qualified Workweeks for all Settlement Class Members. The respective Qualified Workweeks for each Settlement Class Member will be divided by the Qualified Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member.

All Individual Settlement Payments to Settlement Class Members shall be allocated as follows for tax purposes: 20% of each Individual Settlement Payment reflects a compromise of a claim for alleged unpaid wages; 80% of each Individual Settlement Payment reflects a compromise of a claim for alleged interest and penalties. The portion of the Individual Settlement Payment attributable to unpaid wages will be subject to regular and/or applicable payroll and income tax withholdings and will be reported on an IRS Form W-2. Settlement Class Members will receive an IRS Form 1099 for the portion of the Settlement Payment attributable to alleged interest and penalties if required by law. Settlement Class Members will be responsible for correctly characterizing the Individual Settlement Payment for tax purposes and paying taxes due, if any.

Your total estimated Qualified Workweeks is ______________. Based on that, your anticipated approximate Individual Settlement Payment is ______________. The actual amount you may receive may be different and will depend on several factors.

8. How will the PAGA Payment be allocated to the LWDA and PAGA Members?

The Parties will ask the Court to approve the $20,000 PAGA Payment in settlement of claims for civil penalties under PAGA. As required under PAGA, 75% of the PAGA Payment, or $15,000.00, will be paid to the California Labor and Workforce Development Agency. The remaining 25% of the PAGA Payment, or $5,000.00, will be distributed to the PAGA Members as Individual PAGA Payments.

No claim form is required to receive an Individual PAGA Payment. Because PAGA Members cannot opt out of the PAGA settlement, if you are a PAGA Member and you opt out of the class settlement, you will still receive an Individual PAGA Payment and be bound by the PAGA settlement.

Each PAGA Member's Individual PAGA Payment will be a pro-rata share of the 25% of the PAGA Payment to be distributed to PAGA Members. It will be based on the number of Qualified Workweeks that each PAGA Member worked for Defendants during the PAGA Period (January 4, 2022 through the date of entry of the Preliminary Approval Order) as a proportion of all Qualified Workweeks for all PAGA Members. For tax purposes, 100% of the Individual PAGA Payments will be allocated as penalties for which an IRS Form 1099 will be issued, if required by law.

Your total estimated Qualified Workweeks is ______________. Based on that, your anticipated Individual PAGA Payment is ______________. The actual amount you may receive may be different and will depend on several factors.

HOW TO GET A PAYMENT

9. <u>How can I get a settlement payment?</u>

If you wish to receive a payment under the terms of the settlement, you do not have to do anything. You will automatically receive your Individual Settlement Payment and Individual PAGA Payment (if any). You must notify the Settlement Administrator of any change in your name, mailing address and/or telephone number if the information shown on this is not correct. **It is your responsibility to keep the Settlement Administrator informed of any change in your address. Settlement payments will be mailed to the last known address the Settlement Administrator has on file for you.** You can contact the Settlement Administrator by U.S. Mail, email, or phone at ___________ if you need to update contact information.

10. <u>What do I do if I believe my Qualified Workweeks are incorrect?</u>

If you believe the Qualified Workweeks above are not correct, you may send a letter to the Settlement Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before _____________, 2024. [*45 days within mailing of Notice*] You should include any documents or other information which support what you believe supports that you worked a different number of Qualified Workweeks. The Settlement Administrator will resolve any dispute regarding these issues based on Defendants' records and any information you provide.

11. <u>When can I expect to receive a settlement check?</u>

Individual Settlement Payments and Individual PAGA Payments will be mailed to Settlement Class Members and PAGA Members approximately 15 months after the Court's approval of the Settlement becomes final, which will generally occur after the Court grants final approval and enters judgment and the time for filing an appeal has passed. At that point, Defendants will begin paying quarterly installments over the course of one year to fund the Qualified Settlement Fund with the total Gross Settlement Amount.

<u>Settlement checks should be cashed promptly upon receipt</u>. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be distributed to the Controller of the State of California and held in the Unclaimed Property Fund in the name of each Settlement Class Member and/or PAGA Member who did not cash his or her settlement check. If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately.

WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT

12. <u>What am I giving up in exchange for receiving an Individual Settlement Payment?</u>

If the Court approves this Settlement and unless you exclude yourself, you will become a Settlement Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendants concerning the legal claims being resolved in this Settlement. Specifically, you will be giving up or "releasing" the claims described below:

Upon the Effective Date, each Class Member who does not timely submit a valid Request for Exclusion to be excluded from the Class, will, for the Class Period, fully release and forever discharge the Released Parties from certain claims they may have as follows:

"Class Released Claims" means any and all disputes, claims and/or causes of action for wages, statutory and civil penalties (but not PAGA penalties), monies, damages, liquidated damages, premiums, restitution, injunctive and declaratory relief, pre-judgment and post judgment interest, attorney's fees, and costs pleaded in the Action, Plaintiff's PAGA Notice Letter to the LWDA, and/or which reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Settlement Period. This includes, but is not limited to, any claims for: (1) failure to pay minimum wages under California Labor Code § § 1194, 1194.2,1197, and the applicable IWC Wage Order; (2) failure to pay wages and overtime under California Labor Code §§ 510, 1194, 1198, 1199, and the applicable IWC Wage Order; (3) meal period liability under California Labor Code §§ 512, 226.7, and the applicable IWC Wage Order; (4) Rest Break Liability Under California Labor Code §§ 226.7 and 512 and applicable IWC Wage Order; (5) failure to furnish accurate itemized statements under California Labor Code §§ 226(a) and 226(e); (6) violation of California Labor Code § 221; (7) failure to timely pay wages under California Labor Code §§ 204 and 210 and the applicable IWC Wage Order; (8) failure to pay all wages owed at termination of employment under California Labor Code § § 201, 202, 203, 1199, and the applicable IWC Wage Order; (9) failure to reimburse necessary business expenses under Labor Code § 2802, and the applicable IWC Wage Order; (10) violation of California Business and Professions Code § 17200 *et seq.* (11) failure to maintain records under California Labor Code § 1174; (12) failure to provide paid sick days and COVID-19 supplemental sick leave in violation of California Labor Code §§ 246, 248.1, 248.2, and 248.5; and with respect to the statutory and civil penalties claimed in the Action, whether under California Labor Code § 558, or otherwise ("Class Released Claims") against the Released Parties.

13. <u>What PAGA Claims are released by this Settlement?</u>

Upon the Effective Date, the Labor Workforce Development Agency, State of California, and Plaintiff as a representative of and proxy for the LWDA, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the PAGA Released Claims as follows.

"PAGA Released Claims" shall mean the release of the Released Parties by the LWDA, State of California, and by Plaintiff as a representative of and proxy for the LWDA from all claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq*. ("PAGA"), or otherwise, that were alleged in the PAGA Notice Letter, the Action, and/or claims which reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the PAGA Period. This includes, but is not limited to: (1) failure to pay minimum wages and failure to pay overtime wages for overtime hours worked under California Labor Code § 226.2, 510 1194(a), 1197, 1198 and applicable IWC Wage Order; (2) failure to provide meal-periods and rest-periods under California Labor Code §§ 512, 1198, 226.7, and applicable IWC Wage Order; (3) failure to provide accurate, itemized wage statements and failure to maintain employment records under California Labor Code §§ 226, 1174, 1198.5 and applicable IWC Wage Order; (4) failure to timely pay all wages owed, including semi-monthly and upon separation or termination, under California Labor Code §§ 201, 202, 203, 204, 226.2, 1197.5, 2926, and 2927; (5) failure to reimburse the necessary work related expenses, and Defendant's unlawful deductions from wages under California Labor Code §§ 221, 1197, 1197.1, 1198, 2802 and applicable IWC Wage Orders; (6) failure to provide paid sick days and COVID-19 supplemental sick leave in violation of California Labor Code §§ 246, 248.1, 248.2, 248.5; and (7) background check violations pursuant to California Labor Code § 1024.5.

"Released Parties" is defined to include Hebrew Home for Aged Disabled dba San Francisco Campus for Jewish Living , Jewish Home and Senior Living Foundation, and any of its or their past, present, and future direct or indirect parents, subsidiaries, affiliates or related entities, holding companies, affiliated companies, partnerships, limited liability companies, as well as each of its or their past, present, and future officers, directors, employees, partners, members, managers, customers, subcontractors, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

EXCLUDING YOURSELF FROM THE CLASS SETTLEMENT

14. <u>How do I opt out of the class settlement?</u>

You can opt out of this Settlement and retain your rights instead of receiving a payment under this Settlement. However, you cannot opt out of the PAGA portion of the Settlement. Class Members who opt out of this Settlement will still be bound by the PAGA portion of the Settlement and will receive an Individual PAGA Payment.

To opt out of the class portion of the Settlement and the release of Released Class Claims, you must provide a signed and dated letter to the Settlement Administrator requesting to be excluded. The letter should include your reasons for excluding yourself and sufficient identifying information, and must state in substance:

> "I want to opt out of the class action settlement in the lawsuit entitled *Mark A. Fletcher v. Hebrew Home for Aged Disabled, et al., San Francisco County Superior Court Case No. CGC-23-603795)* filed in the Superior Court of California, County of San Francisco."

The opt-out request letter must include the case name, case number, your full name, current address, and last four digits of your social security number, must be signed by you, and must be postmarked and mailed to the Settlement Administrator at the following address (or in the enclosed envelope) on or before ____________, 2024. [*45 days within mailing of Notice*] Opt-out requests postmarked after the deadline will be invalid.

Mark A. Fletcher v. Hebrew Home for Aged Disabled, et al.
Settlement Administrator
c/o Apex Class Actions

P. O. Box __________

_______, _________

15. <u>If I don't exclude myself from the class settlement, can I sue Hebrew Home For Aged Disabled, San Francisco Campus For Jewish Living, and Jewish Home And Senior Foundation for the same thing later?</u>

No. Unless you exclude yourself, you give up any right to sue the Released Parties for the claims being released by this Settlement, the Class Released Claims. If you have a claim or lawsuit already filed against Hebrew Home For Aged Disabled, San Francisco Campus For Jewish Living, Jewish Home and Senior Living Foundation, or any of the Released Parties you should speak to your lawyer in that case immediately. You cannot exclude yourself from the PAGA portion of the Settlement.

OBJECTING TO THE SETTLEMENT

16. <u>How do I tell the Court that I have an objection?</u>

You can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections and notices of intent to appear at the Final Approval Hearing must be mailed to the Settlement Administrator and postmarked on or before ___________, 2025, at the following address:

Mark A. Fletcher v. Hebrew Home for Aged Disabled, et al.
Settlement Administrator
c/o Apex Class Actions
P. O. Box _________
_______, ________

The written objection should state your name, address, last four digits of your Social Security number and/or Employee ID number, whether you plan to attend the Final Approval Hearing, and describe all legal and factual reasons that you object to the terms of the settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the final approval hearing, the Settlement Agreement will be approved, and you will receive your settlement share. If you do not submit a written objection, you may still appear at the final approval hearing to voice your objection or to otherwise observe the proceedings.

THE COURT'S FINAL APPROVAL HEARING

17. When and where will the Court decide whether to grant final approval of the settlement?

The Court will hold a Final Approval hearing Department ___ of the San Francisco County Superior Court located at 400 McAllister St., San Francisco, CA 94102 on ________________ 2025, at ___ p.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, the Class Representative's service payment, and the Settlement Administrator's fees and expenses.

The Court may reschedule the Final Approval hearing without further notice to Class Members. You can also check the San Francisco County Superior Court website at https://sf.courts.ca.gov/online-services/case-information for changes to the hearing schedule. Any Class Member who files a notice of intent to appear at the Final Fairness hearing will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness hearing.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Judge may have. But you are welcome to come at your own expense. If you timely submit a written objection, you don't have to come to Court to talk about it but you may. You may also hire and pay your own lawyer to attend if you so desire.

GETTING MORE INFORMATION

19. Whom may I contact if I have questions about the settlement?

You may contact Class Counsel at the contact information listed above in Paragraph 5 if you have any questions about the Settlement. You may also contact the court-appointed Settlement Administrator, Apex Class Actions. by calling toll free 1-800___________, or you can write to *Mark A. Fletcher v. Hebrew Home for Aged Disabled, et al.*, Class Action Settlement Administrator at [address].

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS' MANAGERS, SUPERVISORS, OR ATTORNEYS FOR MORE INFORMATION.

EXHIBIT 2