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Attorneys for Plaintiff

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

JESSE JOERGER, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

vs.

IES RESIDENTIAL, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CVRI2205490

Honorable Harold Hopp
Department 1

**DECLARATION OF VARTAN MADOYAN
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

[Plaintiff's Motion for Preliminary Approval of
Class Action Settlement; Declaration of
Settlement Administrator; and [Proposed]
Order filed concurrently herewith]

Please see Notice of Hearing

Date: ~~October 24, 2023~~
Time: 8:30 a.m.
Department: 1

Complaint Filed: December 16, 2022
Trial Date: None Set

DECLARATION OF VARTAN MADOYAN

I, Vartan Madoyan, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Jesse Joerger (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would competently testify thereto.

EXPERIENCE AND ADEQUACY OF LAWYERS *for* JUSTICE, PC

2. Since October 2008, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, Lawyers *for* Justice, PC is attorney of record in well over a dozen employment-related putative class actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC is comprised of attorneys who focus on litigating complex wage-and-hour class and Private Attorneys General Act (“PAGA”) representative actions. The firm has successfully litigated cases involving nearly every aspect of California wage and hour law, including payment of overtime and minimum wages, provision of meal and rest breaks and/or premiums wages for same, timely payment of wages, provision of compliant wage statements, reimbursement of business expenses, executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements, PAGA claims, and sister statutes under federal law. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California. Below is a summary of the experience and qualifications of attorneys at Lawyers *for* Justice, PC who most recently and primarily have been responsible for the representation of Plaintiffs in this matter. Additional attorney and non-attorney staff have also worked on the matter.

3. Edwin Aiwazian is the Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal education and training in dispute resolution and negotiation from

1 the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree
2 program. In addition, he has previously served as a pro bono mediator for the Los Angeles County
3 Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA
4 Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University.
5 From approximately September 2002 to approximately December 2002, he served as a Judicial
6 Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the
7 Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a
8 Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second
9 Appellate District. In December of 2004, he obtained a license to practice law from the California
10 State Bar. For over a decade, Lawyers *for* Justice, PC has almost exclusively focused on the
11 prosecution of consumer and employment class actions. While employed by Lawyers *for* Justice
12 PC, he has argued over one hundred (100) motions, taken or defended over one hundred fifty (150)
13 depositions, prepared dozens of expert witnesses for deposition or trial, and attended over one
14 hundred seventy-five (175) mediations. Under his supervision, Lawyers *for* Justice, PC has
15 successfully obtained class certification by contested motion practice in approximately fifteen (15)
16 cases in the last decade and litigated over 1,000 class action or representative action cases.

17 4. Arby Aiwarzian is a Member and Shareholder of Lawyers *for* Justice, PC. He
18 received his Bachelor of Arts degree from University of California, Los Angeles and graduated
19 magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School.
20 From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the
21 Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District.
22 From approximately August 2008 to approximately December 2008, he served as a Judicial Extern
23 to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit.
24 He was admitted to practice law in California in 2010. He is admitted to practice before all courts
25 of the State of California and all United States District Courts in the State of California. He has
26 worked on many wage-and-hour class action and representative action cases, taking the lead in
27 taking and defending depositions, arguing motions, and attending mediations. He has played an
28 integral role in preparing matters for class certification, including and not limited to, successful

1 certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No.
2 BC424012), *Montazemi v. Regus Management* (Los Angeles County Superior Court Case No.
3 BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No.
4 RG13680477). Under his supervision, dozens of class action or representative cases have resulted
5 in settlements that have been granted court approval, including and not limited to, those listed in
6 paragraph 7 herein. He has worked on over one hundred and fifty (150) mediations and worked
7 on over two hundred and fifty (250) class action or representative action cases which have resulted
8 in settlement.

9 5. Joanna Ghosh is a Senior Member of Lawyers for Justice, PC. She received a
10 Bachelor of Arts degree from California State University, Los Angeles in 2006, a Master of
11 Science degree from the London School of Economics in 2007, and a Juris Doctor degree from
12 Georgetown University Law Center in 2010. She is admitted to practice in California (since 2010)
13 and in New York (since 2013) and is also admitted to practice in all U.S. District Courts in
14 California, the U.S. Bankruptcy Court for the Central District of California, and the U.S. Supreme
15 Court. She has taken and defended dozens of depositions and successfully handled motion practice
16 in class action cases regarding discovery (including and not limited to, regarding class contact
17 information), class certification (both contested class certification and stipulated class
18 certification), arbitration agreements, coordination, and intervention. She has successfully
19 handled briefing and oral argument on appeal and obtained notable decisions regarding the Private
20 Attorneys General Act and employer efforts to compel arbitration, e.g., *Betancourt v. Prudential*
21 *Overall Supply*, 9 Cal.App.5th 439 (Cal. Ct. App., Mar. 7, 2017), cert. denied (Cal., May 24, 2017),
22 cert. denied (U.S., Dec. 11, 2017) and *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). She has
23 significant experience with class actions, including and not limited to working on cases to obtain
24 class certification through contested motion practice and working on cases in the post-certification
25 stage (e.g., post-certification discovery, appeal, statistical sampling and pilot study, and trial
26 preparation in conjunction with co-counsel in a case involving a certified class consisting of
27 approximately 2,600 individuals). She also has extensive experience with class action and/or
28 representative action settlements, and has handled this process in over three hundred (300) cases.

1 Under her, Edwin Aiwarzian, and Arby Aiwarzian's supervision, the firm has handled the class
2 certification and court approval process for hundreds of class action and/or representative action
3 matters that have successfully resolved. She is a member of the California Employment Lawyers
4 Association.

5 6. I, Vartan Madoyan, am a Member of Lawyers *for* Justice, PC. I received my
6 Bachelor of Arts degree in Economics from the University of California, San Diego in 2007, and
7 a Juris Doctor degree from Loyola Law School in 2011, graduating with Cum Laude and Order of
8 the Coif honors. I am admitted to practice before all courts in the State of California and all U.S.
9 District Courts in California. I externed for the Honorable Victoria S. Kaufman of the United
10 States Bankruptcy Court, Central District of California, from June 2009 to August 2009. I
11 externed for the Honorable Gary A. Feess of the United States District Court, Central District of
12 California, from January 2010 to May 2010. From 2011 through and including the present, I have
13 practiced almost exclusively on complex wage and hour class action and PAGA action matters in
14 California. From October 2011 to June 2013, I was an Associate at Littler Mendelson's Century
15 City, California office, working for one of the largest employer-side labor and employment law
16 firms in the United States. From July 2013 to March 2014, I was an Associate at Sheppard, Mullin,
17 Richter & Hampton's Century City, California office. From March 2014 to July 2023, I worked
18 as an Associate and then as Counsel at Baker Hostetler LLP's Los Angeles office. From August
19 2023 to the present, I have been a Member of Lawyers *for* Justice, PC. I have taken and defended
20 dozens of depositions and successfully handled motion practice in class action and PAGA cases
21 regarding discovery (including and not limited to motions regarding class contact information),
22 class certification (both contested class certification and stipulated class certification), dispositive
23 motions, arbitration agreements, coordination, and intervention. I have successfully handled a
24 complex wage and hour class action and PAGA case through a trial verdict in the matter of *Estrada*
25 *v. Royalty Carpet Mills*, Orange County Superior Court, Case No. 30-2013-00692890, which is
26 currently on appeal with the California Supreme Court (cert granted). I have also successfully
27 handled briefing on appeal regarding employer efforts to compel arbitration. *TitleMax of Cal. v.*
28 *Pena*, California Court of Appeals for the Fifth District, Case No. F084706 (Cal. Ct. App. March

28, 2023) (unpublished decision). Further, I have extensive experience with settlements of class actions and PAGA actions and have handled and supervised this process in over fifty (50) cases.

***EXAMPLES OF RESULTS IN WAGE-AND-HOUR CLASS ACTION AND
REPRESENTATIVE ACTION CASES***

7. What follows are just a few examples of the type of results Lawyers *for* Justice, PC (“LFJ”) has achieved on behalf of its clients:

a) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a major property management company involving allegations of misclassification of various “manager” positions. On September 20, 2010, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC400414.

b) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer of household items involving allegations of misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

c) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national property management company involving allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC430918.

d) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer involving allegations of misclassification of the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class certification. On August 26, 2013, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC424012.

e) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class and PAGA representative action against a bank, involving allegations of

1 misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court
2 granted final approval of the class and PAGA representative action settlement. The Kern County
3 Superior Court Case Number is S-1500-CV-273194-LHB.

4 f) LFJ, in association with co-counsel therein, represented the plaintiff in a
5 wage-and-hour class and PAGA representative action against a national wholesale distributor of
6 plumbing and builder supplies, involving allegations of misclassification of multiple salaried
7 “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA
8 representative action settlement. The Sacramento County Superior Court Case Number is 34-
9 2012-00136285.

10 g) LFJ, in association with co-counsel therein, represented the plaintiff in a
11 wage-and-hour class action against a multinational corporation that provides global workplace
12 solutions, involving allegations of misclassification of the “Operations Manager” position. On
13 September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles
14 County Superior Court Case Number is BC478769.

15 h) LFJ, in association with co-counsel therein, represented the plaintiff in a
16 wage-and-hour class and PAGA representative action against a national retailer of household
17 items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted
18 final approval of the class and PAGA representative action settlement. The San Francisco County
19 Superior Court Case Number is CGC-13-532344.

20 i) LFJ, in association with co-counsel therein, represented the plaintiff in a
21 wage-and-hour class and PAGA representative action involving allegations of misclassification of
22 the salaried residential “Property Manager” position. On September 17, 2015, the court granted
23 plaintiff’s motion for class certification. On October 20, 2017, the court granted final approval of
24 the class and PAGA representative action settlement. The Los Angeles County Superior Court
25 Case Number is BC474784.

26 j) LFJ, in association with co-counsel therein, represented the plaintiffs in a
27 wage-and-hour class and PAGA representative action against a national retailer of upscale
28 hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court

1 granted final approval of the class and PAGA representative action settlement. The Los Angeles
2 County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council
3 Coordination Proceeding Number is 4794.

4 k) LFJ, in association with co-counsel therein, represented the plaintiffs in a
5 wage-and-hour class action against a national retailer of apparel and fashion accessories, on behalf
6 of non-exempt employees. On August 5, 2016, the court granted final approval of the class action
7 settlement. The Los Angeles County Superior Court Case Number is BC488069.

8 l) LFJ, in association with co-counsel therein, represented the plaintiffs in a
9 wage-and-hour class action against a national retailer of apparel, accessories, and home products,
10 involving allegations of misclassification of the “Department Manager” position. On August 12,
11 2016, the court granted the plaintiffs’ motion for class certification in part and certified a class. On
12 August 6, 2019, the court granted final approval of the class action settlement. The Alameda
13 County Superior Court Case Number is RG13680477.

14 m) LFJ represented the plaintiff in a PAGA representative action against a real
15 estate and property management company, on behalf of non-exempt employees. On November 4,
16 2016, the court granted approval of the PAGA representative action settlement. The Orange
17 County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

18 n) LFJ, in association with co-counsel therein, represented the plaintiffs in a
19 wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-
20 exempt employees. On November 18, 2016, the court granted final approval of the class and
21 PAGA representative action settlement. The San Francisco County Superior Court Case Number
22 is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

23 o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
24 representative action against a foodservice distributor, on behalf of non-exempt employees. On
25 January 26, 2017, the court granted final approval of the class and PAGA representative action
26 settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

27 p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative
28 action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the

1 employer's motion to compel arbitration, which resulted in a published opinion by the California
2 Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal.
3 App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court
4 Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and
5 RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

6 q) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class and PAGA representative action against a consumer packaging company, on
8 behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class
9 and PAGA representative action settlement. The Los Angeles County Superior Court Case
10 Number is BC590429.

11 r) LFJ, in association with co-counsel therein, represented the plaintiffs in a
12 wage-and-hour class and PAGA representative action against a manufacturer of food service
13 industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final
14 approval of the class and PAGA representative action settlement. The Orange County Superior
15 Court Case Number is 30-2015-00810013-CU-OE-CXC.

16 s) LFJ, in association with co-counsel therein, represented the plaintiffs in a
17 wage-and-hour class and PAGA representative action against a lumber and hardware company on
18 behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class
19 and PAGA representative action settlement. The Orange County Superior Court Case Number is
20 30-2014-00747750-CU-OE-CXC.

21 t) LFJ represented the plaintiff in a wage-and-hour class and PAGA
22 representative action against a property management company, on behalf of non-exempt
23 employees. On June 14, 2017, the court granted final approval of the class and PAGA
24 representative action settlement. The Los Angeles County Superior Court Case Number is
25 BC586234.

26 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
27 representative action against a food company on behalf of non-exempt employees. On June 30,

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1 2017, the court granted final approval of the class and PAGA representative action settlement. The
2 Sacramento County Superior Court Case Number is 34-2015-00175871.

3 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
4 representative action against a chocolate company on behalf of non-exempt employees. On July
5 19, 2017, the court granted final approval of the class and PAGA representative action settlement.
6 The Alameda County Superior Court Case Number is RG15764300.

7 w) LFJ represented the plaintiff in a PAGA representative action, against the
8 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
9 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
10 Los Angeles County Superior Court Case Number is BC569664.

11 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
12 representative action against a manufacturer of plastic containers on behalf of non-exempt
13 employees. On October 31, 2017, the court granted final approval of the class and PAGA
14 representative action settlement. The Los Angeles County Superior Court Case Number is
15 BC577233.

16 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
17 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
18 employees. On December 11, 2017, the court granted final approval of the class and PAGA
19 representative action settlement. The Los Angeles County Superior Court Case Number is
20 BC569646.

21 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
22 wage-and-hour class and PAGA representative action against a property management company
23 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
24 approval of the class and PAGA representative action settlement. The Los Angeles County
25 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
26 Number is 4819.

27 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
28 wage-and-hour class and PAGA representative action against a global provider of flexible office

1 space solutions. On February 15, 2018, the court granted final approval of the class and PAGA
2 representative action settlement. The Los Angeles County Superior Court Case Number is
3 BC498401.

4 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
5 wage-and-hour class action against a container manufacturer, on behalf of non-exempt employees.
6 On October 15, 2018, the court granted the plaintiff's motion for class certification. The Tulare
7 County Superior Court Case Number is VCU264528.

8 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
9 representative action against a behavioral health service provider on behalf of non-exempt
10 employees. On November 13, 2018, the court granted final approval of the class and PAGA
11 representative action settlement. The Alameda County Superior Court Case Number is
12 RG16811450.

13 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
14 PAGA representative action against a global provider of products and services to the energy
15 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court
16 granted approval of the PAGA representative action settlement. The Kern County Superior Court
17 Case Number is S-1500-CV-280215-SDC.

18 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
19 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
20 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
21 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
22 Council Coordination Proceeding Number is 4886.

23 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
24 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
25 employees. On September 27, 2019, the court granted the plaintiffs' motion for class certification
26 in part and certified a class. The Alameda County Superior Court Case Number is RG15757606
27 and the Judicial Council Coordination Proceeding Number is 4921.

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1 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
2 wage-and-hour class and PAGA representative action against a national retailer of apparel and
3 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
4 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
5 court granted final approval of the class and PAGA representative action settlement. The
6 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

7 hh) LFJ, in association with co-counsel therein, represents the plaintiff in a
8 wage-and-hour class and PAGA representative action against a medical equipment supplier on
9 behalf of non-exempt employees. On February 13, 2020, the court granted the plaintiff's motion
10 for class certification and certified a class. The San Bernardino County Superior Court Case
11 Number is CIVDS1505744.

12 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
13 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
14 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
15 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
16 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted approval
17 of the PAGA representative action settlement. The San Diego County Superior Court Case
18 Number is 34-2015-00175330.

19 jj) LFJ, in association with co-counsel therein, represents the plaintiff in a
20 wage-and-hour class and PAGA representative action against a large national drug testing
21 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
22 plaintiff's motion for class certification and certified a class. The San Diego County Superior
23 Court Case Number is 37-2018-00019611-CU-OE-CTL.

24 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
25 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
26 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
27 court granted in part the plaintiff's motion for class certification and certified a class. The

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1 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
2 Judicial Council Coordination Proceeding Number is 4930.

3 ll) LFJ, in association with co-counsel therein, represented the plaintiffs in a
4 wage-and-hour class action against manufacturer and supplier of power products and services on
5 behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs' motion
6 for class certification and certified a class. On August 27, 2021, the court granted final approval
7 of the class action settlement. The San Diego County Superior Court Case Number is 37-2015-
8 00025968-CU-OE-CTL.

9 mm) LFJ represents the plaintiff in a wage-and-hour class action against a
10 nutritional products manufacturer on behalf of non-exempt production line employees. On
11 December 13, 2021, the court granted the plaintiff's motion for class certification in part and
12 certified a class. The Solano County Superior Court Case Number is FCS051001.

13 nn) LFJ represents the plaintiffs in a wage-and-hour class action against a
14 manufacturer and distributor of commercial dish and glass cleaning machines and supplies for the
15 restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On July
16 13, 2023, the court granted the plaintiffs' motion for class certification and certified a class. The
17 Los Angeles County Superior Court Case Number is BC707670.

18 **PRELIMINARY APPROVAL**

19 8. Marked and attached hereto as "**EXHIBIT 1**" is the Joint Stipulation of Class Action
20 and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement")
21 entered into by and between Plaintiff Jesse Joerger ("Plaintiff"), individually and on behalf of all
22 others similarly situated and on behalf of the State of California pursuant to PAGA, on the one
23 hand, and Defendant IES Residential, Inc. ("Defendant"), on the other hand (collectively, the
24 "Parties"). The Parties and their counsel have also approved the proposed Exclusion Form and
25 Objection Form, attached as "**EXHIBIT B**" and "**EXHIBIT C**," respectively, to the [Proposed]
26 Order Granting Preliminary Approval of Class Action Settlement, and respectfully request that the
27 Court approve them as well.

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1 9. The effectiveness of Lawyers *for* Justice, PC (“Class Counsel”) in prosecuting this
2 matter has translated into significant and tangible monetary benefits for the Class Members in the
3 following respects: (1) Class Members recover over a reasonably short period of time as opposed
4 to waiting additional years for the same, or possibly worse, result; (2) a guaranteed result that
5 compares favorably with other similar class action settlements of this type given the strengths and
6 weaknesses of the case; and (3) significant savings in Class Counsel’s fees and/or costs that would
7 have only increased significantly had the case progressed through certification, trial, and/or
8 appeals.

9 10. Class Counsel has investigated and litigated this case for nearly a year, and was
10 actively preparing the matter for class certification and trial. The Parties have engaged in extensive
11 settlement negotiations and participated in a formal, full-day mediation conducted by Hon. S.
12 James Otero (Ret.), a well-respected mediator and retired judge who is experienced in mediating
13 and resolving complex labor and employment matters. In the course of the litigation and in
14 connection with the mediation and settlement discussions, the Parties engaged in confidential
15 mediation discovery, through which Plaintiff obtained information, documents, and employment
16 data with respect to Plaintiff, class members, and aggrieved employees. The Parties also engaged
17 in an extensive discussions regarding their evaluations of the case and various aspects of the case,
18 including but not limited to, the risks and delays of further litigation, the risks to the Parties of
19 proceeding with class certification and/or representative adjudication, the law as it applies to off-
20 the-clock, rounding, regular rate, meal and rest periods (including, *inter alia*, on premises breaks),
21 piece-rate compensation (and related theories regarding compensation for productive and non-
22 productive time), expense reimbursements, recordkeeping and wage statements, the applicable
23 wage orders, PAGA claims, wage and hour enforcement, and class certification, as well as the
24 evidence produced and analyzed and the possibility of appeals, among other things. During all
25 settlement discussions, the Parties conducted their negotiations at arm’s length in an adversarial
26 position. Arriving at a settlement that was acceptable to all Parties was not easy. Defendant and
27 their counsel felt strongly about their ability to prevail on the merits and at certification, and
28 Plaintiff and Class Counsel believed that they would be able to obtain class certification and

1 prevail at trial. After conducting investigations, extensive informal discovery, exchange of
2 information, and settlement negotiations, and with the aid of the mediator's evaluation, the Parties
3 have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's
4 principal claims, as well as the costs and risks to both sides that would attend further litigation.
5 The Settlement is a fair, reasonable, and adequate resolution of the Released Class Claims of
6 Plaintiff and Settlement Class Members and of the Released PAGA Claims of Plaintiff, PAGA
7 Aggrieved Employees, and the State of California, against the Released Parties.

8 11. **Section 3(G)(a)(vi) of CMO.** Prior to reaching the Settlement, Class Counsel
9 investigated the veracity, strength, and scope of the claims, and was preparing the action for class
10 certification and trial. Plaintiff conducted significant investigation and informal discovery
11 regarding the facts of the case, including and not limited to, the exchange, review, and analysis of
12 a large volume of information, documents, and data obtained from Defendant, Plaintiff, and other
13 sources. As to the informal discovery, the volume of information, data, and documents that Class
14 Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records,
15 a detailed sampling of Plaintiff's, class members', and aggrieved employees' timekeeping and
16 payroll and reimbursement data, earning statements, company policy acknowledgements, internal
17 memoranda, job descriptions, and Defendant IES Residential, Inc.'s Employee Handbook and
18 operations and employment policies, practices, and procedures documents, among other
19 information and documents. Counsel for the Parties also met and conferred on numerous
20 occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and
21 data prior to the mediation. Class Counsel also drafted pleadings, court filings, and a mediation
22 brief, and prepared for and attended mediation and settlement negotiations, among other tasks.

23 12. Counsel for the Parties have also invested significant time researching and
24 investigating the applicable law, which is evolving as it relates to class certification, representative
25 PAGA claims, off-the-clock and rounding theories, regular rate, meal and rest periods,
26 reimbursement, wage and hour enforcement, Plaintiff's claims and damages, and Defendant's
27 defenses thereto, as well as facts discovered. Based on Class Counsel's analysis, I submit that the
28 result achieved in this litigation is fair, adequate, and reasonable.

1 13. The Settlement provides for a Gross Settlement Amount of Five Hundred Forty-
2 Seven Thousand Dollars (\$547,000.00). The Net Settlement Amount is the Gross Settlement
3 Amount less the following amounts subject to approval by the Court: Attorneys' Fees and Costs
4 to Class Counsel, Class Representative Enhancement Payment to Plaintiff, Settlement
5 Administration Costs to the Settlement Administrator, and the PAGA Amount allocated to
6 penalties under PAGA. Assuming that the amounts allocated under the Settlement toward these
7 payments are awarded by the Court, the Net Settlement Amount that will be available for
8 distribution to Settlement Class Members is currently estimated to be at least Two Hundred Forty-
9 Nine Thousand and Fifty Dollars (\$249,050.00). The Gross Settlement Amount will be fully
10 distributed in accordance with the terms of the Settlement.

11 14. After obtaining competing bids from multiple potential settlement administrators
12 ranging from \$6,000.00 to \$9,500.00, the Parties agreed to retain Phoenix Settlement
13 Administrators ("Phoenix" or "Settlement Administrator"), which quoted an estimate of
14 \$6,000.00, to handle the notice and settlement administration. The Parties respectfully request
15 that the Court appoint Phoenix to handle these procedures and serve as the Settlement
16 Administrator. Defendant will confidentially and securely provide Phoenix with a list of Class
17 Members that Defendant will compile from its records, which will include each Class Member's
18 last-known full name, mailing address, telephone number, Social Security Number, start date of
19 employment and end date of employment (or, if applicable, data of conversation to exempt status)
20 as a non-exempt employee of Defendant in California during the Class Period, and such other
21 information as is necessary for the Settlement Administrator to calculate Workweeks (collectively,
22 "Class List") and Phoenix's services include translating the Class Notice in Spanish (if necessary),
23 printing, distributing, and tracking Class Notices, and other documents for this Settlement,
24 calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS
25 Forms and all required tax reporting, filing, withholdings, and remittances, providing necessary
26 reports and declarations, and other duties and responsibilities set forth to process this Settlement,
27 and as requested by the Parties. Phoenix's Settlement Administration Costs are currently
28 estimated to be 6,000.00, but out of an abundance of caution, the Parties have allocated the amount

1 to not exceed \$7,500.00 toward Settlement Administration Costs, with any excess balance
2 reverting back to be added to the Net Settlement Amount for distribution to the Class Members.
3 The Settlement Administration Costs will be paid out of the Gross Settlement Amount, subject to
4 approval of the Court.

5 15. Based on investigation and information discovered, Class Counsel believes that
6 there is sufficient evidence to support the allegations made in the lawsuit, including the allegations
7 that Defendant, with respect to Plaintiff, class members, and aggrieved employees, *inter alia*,
8 failed to properly pay all wages due (including, *inter alia*, minimum, regular, overtime, and
9 reporting time wages), failed to provide compliant meal and rest periods and to pay associated
10 premium pay, failed to timely pay wages during employment and upon termination of
11 employment, failed to provide complaint wage statements, failed to maintain requisite payroll
12 records, and failed to reimburse necessary business expenses, and thereby engaged in unfair
13 business practices and conduct giving rise to civil penalties recoverable under the Private
14 Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq.*). Plaintiff also
15 asserted that Class Members were expected to perform similar job duties and were subject to the
16 same or similar operations and employment policies, practices, and procedures. Additionally,
17 Plaintiff asserted that Defendant's recordkeeping practices with respect to Plaintiff, class
18 members, and aggrieved employees were substantially the same during the time period at issue.
19 As a result, Plaintiff claims that the class members and aggrieved employees, were uniformly not
20 paid all of the compensation that was owed to them by Defendant. Thus, in Class Counsel's view,
21 it is clear that the outcome of this litigation would be determined by Defendant's uniform
22 operations and employment practices, policies, and procedures that Plaintiff alleges applied across
23 Defendant's hourly-paid or non-exempt employees in California during the relevant time period,
24 whom Plaintiff alleges were also subject to the same or similar job duties.

25 16. Class Counsel is aware of the defenses and positions of Defendant, but believes that
26 Plaintiff could potentially obtain class certification despite many obstacles. Plaintiff and Class
27 Counsel have also taken into account the uncertainty and risk of the outcome of further litigation,
28 and the difficulties and delays inherent in such litigation, including those involved in class

1 certification and/or representative adjudication. Plaintiff and Class Counsel further recognize the
2 burdens of proof necessary to establish liability for the claims asserted in the lawsuit, Defendant's
3 defenses, and the difficulties in establishing entitlement to monetary recovery. Plaintiff and Class
4 Counsel have also considered the Parties' settlement discussions, as well as the evaluations of the
5 mediator, who is experienced and well-regarded in complex labor and employment matters.

6 17. Defendant, on the other hand, denied and continues to deny any liability and
7 wrongdoing of any kind associated with the claims alleged in the lawsuit, and further denies that
8 the lawsuit is appropriate for class treatment or representative adjudication for any purpose other
9 than the Settlement. Defendant believes that it would ultimately succeed in the matter. Both sides
10 have also had the opportunity to interview witnesses and review documents and information
11 relating to Plaintiff's, class members' and aggrieved employees' employment with Defendant, and
12 Defendant's operations and employment policies, practices, and procedures. The Parties also
13 reviewed and analyzed a large volume of documents and data, including but not limited to a
14 detailed sampling of class members' and aggrieved employees' time and pay information, to
15 determine the potential value and strength of the claims. The available information enabled Class
16 Counsel to assess and value the potential claims and prepare violation, damages, and penalties
17 analyses models. Accordingly, the Parties have conducted adequate investigation and discovery
18 to be sufficiently informed of the nature and extent of the claims, and to enable both sides to fully
19 evaluate the Settlement for its fairness, adequacy, and reasonableness. The Settlement takes into
20 account the strengths and weaknesses of each side's position and the uncertainty of how the case
21 might have concluded at certification, trial, and/or appeals.

22 18. The Settlement Agreement provides for Class Counsel to apply for attorneys' fees
23 in an amount of up to thirty-five percent (35%) of the Gross Settlement Amount
24 (i.e., \$191,450.00) and expenses and costs in an amount not to exceed Fifteen Thousand Dollars
25 (\$15,000.00), which will be paid out of the Gross Settlement Amount, subject to approval by the
26 Court. It should be noted that Class Counsel has borne all of the risks and costs of litigation and
27 will not receive any compensation until recovery is obtained.

28 ///

19. The Settlement Agreement provides for payment of up to Nine Thousand Dollars (\$9,000.00) to Plaintiff as a Class Representative Enhancement Payment to be paid out of the Gross Settlement Amount subject to approval by the Court. Plaintiff spent considerable time and effort to produce relevant documents and past employment records and to provide the facts and evidence necessary to attempt to prove the allegations. Plaintiff was available whenever Class Counsel needed him and actively tried to obtain information that would benefit the Class. Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Enhancement Payment, in addition to his individual settlement payment, for his services on behalf of the Class, PAGA Aggrieved Employees, and the State of California.

OTHER PENDING ACTIONS

20. **Section 3(G)(a)(vii) of CMO.** I made reasonable inquiry of other members at Lawyers for Justice, PC, and I am aware of one other pending action against Defendant which might be impacted by this Settlement: *Raul Farias Onofre et al., vs. IES Residential, Inc.*, County of Riverside Superior Court, Case No: CVRI2204291 (the “Onofre Action”). The Onofre Action asserts similar class and PAGA wage and hour claims to those asserted by Plaintiff in this action, on behalf of hourly-paid or non-exempt employees of Defendant in the State of California. With respect to the procedural status of the Onofre Action, it remains in the discovery and pre-certification stage (no class has been certified in the Onofre Action, nor has the plaintiff in that case filed any motion for class certification).

ESTIMATED SETTLEMENT PAYMENTS TO CLASS MEMBERS

21. **Section G(3)(a)(i) of CMO.** Based on data provided by Defendant, the total number of Class Members during the period from October 6, 2018 through September 12, 2023 (“relevant time period”) was estimated to be one hundred sixty-five (165) individuals, their aggregate workweeks was estimated to be a total of eighty thousand five hundred and ninety seven (8,597) workweeks, and their average hourly rate of pay was twenty two dollars and thirty five cents (\$22.35).

22. **Section G(3)(a)(i) of CMO.** Based on data provided by Defendant, the total number of aggrieved employees during the period from October 11, 2021 through September 12, 2023 (i.e.

1 the relevant time period under PAGA) was estimated to be ninety (90) individuals, and their
2 aggregate workweeks (and weekly pay periods) was estimated to be four thousand and five (4,005)
3 workweeks/weekly pay periods.

4 23. **Section 3(G)(a)(iv) of CMO.** Based on information provided by Defendant, the
5 minimum Individual Settlement Share for Class Members is estimated to be approximately
6 Twenty Eight Dollars and Ninety Seven Cents (\$28.97), the average Individual Settlement Share
7 for Class Members is estimated to be approximately One Thousand Five Hundred Nine Dollars
8 and Thirty Nine Cents (\$1,509.39), and the high-end range of the Individual Settlement Share for
9 Class Members is estimated to be approximately Seven Thousand Six Hundred Eighteen Dollars
10 and Ninety Five Cents (\$7,618.95).

11 24. **Section 3(G)(a)(v) of CMO.** The Settlement allocates \$75,000 for the PAGA claim,
12 of which 25%, or \$18,750, is to be distributed to PAGA Aggrieved Employees. Based on
13 information provided by Defendant, the ninety (90) PAGA Aggrieved Employees would recover
14 an individual average of Two Hundred Eight Dollars and Thirty-Three Cents (\$208.33) for their
15 portion of the civil penalties allocation.

16 25. **Section 3(G)(c) of CMO.** The Settlement provides that if Settlement Class
17 Members and/or PAGA Aggrieved Employees fail, for any reason, to cash, deposit, or otherwise
18 negotiate their settlement checks, then their checks will be canceled after 180 days and their funds
19 will be distributed to the State of California's Unclaimed Property Division in the names of and
20 for the benefit of those Settlement Class Members and PAGA Aggrieved Employees. Plaintiff
21 believes this allocation best furthers, to the fullest extent possible, the purposes of the underlying
22 class action, and promotes justice because: (a) it maintains the fair pro rata distribution of the
23 Settlement to all employees who did not request exclusion from the Settlement, and for any and
24 all Class Members (or Aggrieved Employees) who mistakenly did not cash their settlement check;
25 (b) it provides Settlement Class Members and PAGA Aggrieved Employees with further
26 opportunities to retrieve funds belonging to them in exchange for the release of their claims as
27 they are deposited with the Unclaimed Property Division (specifically, they need only look up
28 ///

1 their names on Unclaimed Property Division's online database to see whether funds are being held
2 for them and contact the division to obtain their funds).

3 ESTIMATED VALUE OF THE CLAIMS

4 26. Plaintiff's action alleges that Defendant has violated the California Labor Code by
5 engaging in a uniform policy and systematic scheme of wage abuse against Plaintiff and the
6 putative class members, including, *inter alia*, failing to properly compensate wages, failing to
7 provide compliant meal and rest periods and associated premium pay, failing to timely pay wages
8 and associated waiting-time penalties, failing to provide compliant wage statements, and failing
9 to reimburse necessary business expenses, and thereby engaged in unfair business practices under
10 the California Business and Professions Code.

11 27. Having evaluated hundreds of wage-and-hour class action cases, Class Counsel is
12 experienced and qualified to evaluate the claims of the Class Members and the PAGA claims of
13 the State of California with respect to PAGA Aggrieved Employees, as well as Defendant's
14 defenses.

15 28. Both Parties have had the opportunity to interview witnesses, conducted informal
16 discovery and investigations into the facts of the case, and exchanged extensive information and
17 class-wide data.

18 Section G(3)(a)(ii)-(iii) of CMO

19 A. Failure to Pay Wages

20 29. Plaintiff alleged Defendant failed to properly pay wages (minimum, regular,
21 overtime, and reporting time wages). Plaintiff contended that that Defendant's uniform policies,
22 practices, and procedures required Class Members to perform work off-the-clock, including
23 traveling to and from Defendant's locations, traveling to and from client work sites, and
24 performing tasks before clocking in for the day, after clocking out for the day, and during what
25 should have been duty-free meal periods. Plaintiff also alleged that Defendant engaged in
26 improper rounding of time and automatically deducted meal periods. Plaintiff also alleged that
27 Defendant failed to pay reporting time wages, did not properly compensate employees who were
28 compensated on a piece-rate (including, *inter alia*, failing to compensate for nonproductive time

1 and rest and recovery periods) , and failed to properly calculate and pay the regular rate by failing
2 to use non-discretionary, monetary and non-monetary bonus / incentive / production / performance
3 and/or shift differential pay to calculate the regular rate of pay. As a result, Plaintiff contended
4 that Defendant failed to properly compensate Plaintiff and Class Members at their applicable
5 minimum, regular, and/or overtime rates for all of the hours that they worked.

6 30. California Labor Code section 510 provides that when an employee works more than
7 eight (8) hours in any workday, more than forty (40) hours in any workweek, and/or more than six
8 (6) days in a workweek, the employer must pay the employee at least one and one-half times the
9 employee's regular rate of pay for all overtime hours worked. The employer must pay the
10 employee no less than twice his or her regular rate of pay for hours worked in excess of twelve
11 (12) hours in one day or in excess of eight (8) hours on the seventh consecutive day of work.
12 California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC")
13 Wage Order(s) provide that it is unlawful to employ persons without compensating them at a rate
14 of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the
15 number of hours worked by the person on a daily or weekly basis.

16 31. California Labor Code section 1197 provides that it is unlawful to pay employees at
17 a rate less than the minimum wage. California Labor Code sections 1194, 1194.2, 1197, and
18 1197.1 provide that an employee may seek to recover unlawfully unpaid wages by court action, as
19 well as liquidated damages in an amount equal to the wages unlawfully not paid and interest
20 thereon. California Labor Code section 1197.1 provides for civil penalties, which, arguably, may
21 only be recovered by the Labor Commissioner during a one-year statute of limitations period.

22 32. Defendant contended, *inter alia*, that their overtime policies and practices comply
23 with the law, and that they paid Class Members at least (and greater than) the California minimum
24 wage for all hours worked. Defendant contended that they correctly calculated Plaintiff and Class
25 Members' regular rates for purposes of paying overtime. Defendant also produced data reflecting
26 overtime compensation paid to many Class Members, which it contended showed they allowed
27 employees to record all hours worked, including overtime. Defendant further contended that all
28 employees were required to record all time worked, self-reported their time on time sheets they

1 completed and thus had no reason to under-report their time, and were given the opportunity to
2 make any necessary timecard revisions or changes, were directed to record travel time to job sites
3 (if applicable), and that Defendant was not aware of work performed off-the-clock (if any).
4 Defendant further argued that any bonus/incentive/production/performance/shift differential pay
5 was exceedingly rare, occurred only a handful of times during the Class Period, and in those
6 instances, the payments were discretionary in nature and thus not includable in the regular rate of
7 pay for purposes of calculating overtime. Defendant also argued that individual liability issues
8 predominate, including: (a) whether each employee worked off-the-clock; (b) whether Defendant
9 knew or should have known about each employee's off-the-clock work; (c) whether each
10 employee worked overtime; and (d) whether Defendant knew or should have known that each
11 employee performed overtime work. Defendant also contended that Class Members held different
12 job titles and had different job duties and that these circumstances would raise highly
13 individualized questions of fact and would pose challenges to certification, and the merits of the
14 claims for unpaid wages.

15 33. Class Counsel considered information obtained through investigations and from
16 Class Members, as well as a large volume of information, documents, policies and practices, and
17 class data provided by Defendant, and created damages/valuation models prior to the mediation.
18 Based thereon, and even when utilizing the updated class statistics through September 12, 2023
19 (noted above), assuming that it could be proven that Defendant failed to pay one (1) hour of
20 overtime wages every workweek during the relevant time period, the potential value of this claim
21 was estimated to be \$288,214.40 (8,597 workweeks x 1 hour of overtime wages x overtime hourly
22 rate of \$33.525, which is based on the average hourly rate of \$22.35). As to the minimum wage
23 claim, assuming that it could be proven that Defendant failed to pay one-half (1/2) hour of
24 minimum wages on top of the one hour of unpaid overtime wages (accounted for above) every
25 workweek during the relevant time period, the potential value of this claim was estimated to be
26 \$60,179.00 (8,597 workweeks x 1/2 hour of unpaid minimum wages x \$14 average California
27 minimum wage). And with respect to the minimum wage claim, since California law also provides
28 for liquidated damages in an amount equal to the unpaid minimum wages, the same \$60,179.00

1 was utilized for purposes of calculating the potential value of the liquidated damages, bringing the
2 total potential value of the minimum wage claim to \$120,358.00.

3 34. However, this assumes an exposure based on a class having been certified and
4 Plaintiff having proven all elements of the overtime and minimum wage claims, despite risks
5 associated with obtaining and maintaining certification, risks to establishing liability, and
6 significant additional costs that would have to be incurred in order to certify a class and establish
7 liability through trial. Plaintiff also faced the risk of the Court finding that individualized issues
8 predominate, such that class treatment is not suitable, by either denying class certification or by
9 later decertifying any class prior to or during trial. While Class Counsel disagreed with
10 Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and
11 realities of the case, applicable case law and regulations, the costs and expenses of further litigation
12 and certification, and risks to recovery, and applied appropriate discounts for them. With respect
13 to the overtime claim, at this juncture, a discount of 40% was applied to account for the risks
14 associated with obtaining and maintaining certification (bringing the value of the claim closer to
15 \$172,928.64), a discount of 50% was applied to account for the risks associated with succeeding
16 on the merits and establishing liability for such certified claim (bringing the value of the claim
17 closer to \$86,464.32), and a discount of 60% was applied to account for the risks associated with
18 proving the extent of damages and obtaining an award thereof (bringing the value of the claim
19 closer to \$34,585.73). With respect to the minimum wage claim, at this juncture, a discount of
20 40% was applied to account for the risks associated with obtaining and maintaining certification
21 (bringing the value of the claim closer to \$72,214.80), a discount of 50% was applied to account
22 for the risks associated with succeeding on the merits and establishing liability such certified claim
23 (bringing the value of the claim closer to \$36,107.40), and a discount of 60% was applied to
24 account for the risks associated with proving the extent of damages and obtaining an award thereof
25 (bringing the value of the claim closer to \$14,442.96).

26 **B. Failure to Provide Compliant Meal Periods and Associated Premiums**

27 35. Plaintiff's theory of liability was also based on Defendant's failure to provide timely,
28 full, and/or uninterrupted meal periods. Plaintiff contended, *inter alia*, that Defendant's policies,

1 practices, and procedures required employees to perform job duties during their meal periods and
2 prevented them from regularly receiving compliant meal periods. For example, Plaintiff
3 contended that Defendant failed to relieve Plaintiff and Class Members of all duties, failed to
4 relinquish control of their activities, and failed to permit them a reasonable opportunity to take,
5 and impeded or discouraged them from taking, compliant meal periods. Plaintiff further
6 contended that Defendant engaged in improper rounding of time and automatically deducted meal
7 periods. Plaintiff further contended that Defendant failed to pay meal period premiums for missed,
8 late, short, or interrupted meal periods.

9 36. Under California law, an employer must provide an employee with uninterrupted
10 meal periods of not less than thirty (30) minutes before the employee works more than five (5)
11 hours, except that if the total work period per day of the employee is no more than six (6) hours,
12 the meal period may be waived by mutual consent of both the employer and employee. Cal. Lab.
13 Code § 512(a). A second meal period of not less than thirty (30) minutes is required if an employee
14 works more than ten (10) hours per day, except that if the total hours worked is no more than
15 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
16 employee only if the first meal period was not waived. *Id.* An “on-duty” meal period may be
17 agreed to only if “the nature of the work prevents an employee from being relieved of all duty and
18 when by written agreement between the parties an on-the-job paid meal period is agreed to.” IWC
19 Wage Orders 1 through 15, § 11; IWC Wage Order 16, § 10. An employer must pay each
20 employee to whom it fails to “provide” a meal period one hour of wages at his or her regular rate
21 of pay “for each work day that the meal or rest period is not provided.” Cal. Lab. Code § 226.7(b).

22 37. Defendant contended that it had practices, policies, and procedures to provide meal
23 every workday to its employees that fully complied with California law. To the extent that Class
24 Members failed to take their meal periods or took a short or late meal, Defendant contended that
25 they did so voluntarily and that all applicable meal periods were still provided to them. Thus,
26 Defendant argued that it did not act unlawfully to deprive Class Members of meal
27 periods. Defendant also contended that there were multiple individual issues that would pose
28 challenges to certification, including and not limited to, (a) whether any meal periods were non-

1 compliant, and (b) why they were non-compliant. Defendant also contended that Class Members
2 held different job titles and had different job duties, and often worked remotely in the field, and
3 that as a result, there was variation to the circumstances that could allegedly cause them to be
4 deprived of the opportunity to take legally-compliant, duty-free meal periods, and that this
5 variation in circumstances raised highly individualized questions of fact. Defendant further
6 contended that numerous Class Members would attest they received timely, complete meal periods
7 during their employment.

8 38. Class Counsel considered information obtained through investigations and from
9 Class Members, as well as a large volume of pages of information, documents, policies and
10 practices, and class data provided by Defendant, and created damages/valuation models prior to
11 the mediation. Based thereon, and even when utilizing the updated class statistics through
12 September 12, 2023 (noted above), assuming that it could be proven that one (1) meal premium is
13 due for every workweek during the relevant time period, the potential value of this claim was
14 estimated to be \$192,142.95 (8,597 workweeks x 1 meal premium per week x average hourly rate
15 of \$22.35).

16 39. Class Counsel also considered the risk of further litigating the case, including the
17 significant additional costs that will be incurred by both sides if the case does not settle, as
18 litigating a class action through class certification, trial, and/or appeals is expensive and
19 significantly delays Class Members' recovery (if any). Moreover, litigating meal period claims is
20 inherently difficult as an employer's records, as is the case here, do not usually indicate when a
21 meal period is interrupted. While Class Counsel disagreed with Defendant's arguments and
22 factual contentions, Class Counsel recognized the circumstances and realities of the case,
23 applicable case law and regulations, costs and expenses of further litigation and certification, and
24 risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 40%
25 was applied to account for the risks associated with obtaining and maintaining certification
26 (bringing the value of the claim closer to \$115,285.77), a discount of 50% was applied to account
27 for the risks associated with succeeding on the merits and establishing liability for such certified
28 claim (bringing the value of the claim closer to \$57,642.89), and a discount of 60% was applied

1 to account for the risks associated with proving the extent of damages and obtaining an award
2 thereof (bringing the value of the claim closer to \$23,057.15).

3 **C. Failure to Provide Compliant Rest Periods and Associated Premiums**

4 40. Plaintiff's theory of liability was also based on Defendant's failure to provide Class
5 Members with timely, full, and/or uninterrupted rest periods. Plaintiff contended that Defendant's
6 employment policies, practices, and procedures required employees to perform job duties during
7 their rest periods and prevented them from regularly receiving compliant rest periods. Plaintiff
8 contended that he and other Class Members were required to remain on premises during rest
9 periods (particularly in the field) and that Defendant failed to pay rest period premiums for missed,
10 late, short, or interrupted rest periods.

11 41. California law requires an employer to provide rest periods to all employees at the
12 rate of ten (10) minutes every four hours of work or major fraction thereof. Cal. Lab. Code
13 § 226.7. When an employer fails to provide a compliant rest period, the employer is required to
14 either (a) provide another rest period or (b) pay one additional hour of pay at the regular rate of
15 pay "for each work day that the meal or rest period is not provided." *Augustus v. ABM Security*
16 *Services, Inc.* (2016) 2 Cal.5th 257, 271-72; Cal. Lab. Code § 226.7(b). However, employees are
17 exempt from the rest breaks law, if their duties and responsibilities qualify for one or more of the
18 exemptions under California or federal law. See Cal. Lab. Code § 226.7(c); see e.g., 49 CFR § 395.

19 42. Defendant contended that it had methods, policies, and procedures to provide all
20 applicable rest periods every workday to Class Members that fully complied with the law.
21 Defendant also contended that no employee is required to remain on premises for rest periods, as
22 warehouse employees could leave the facility, and field employees could also leave their job site
23 for rest periods. Defendant argued that the reasons why a Class Member failed to receive a
24 compliant rest period raised individual issues that could not be certified.

25 43. Class Counsel considered information obtained through investigations and from
26 Class Members, as well as hundreds of pages of documents and class data provided by Defendant,
27 and created damages/valuation models prior to the mediation. Based thereon, and even when
28 utilizing the updated class statistics through September 12, 2023 (noted above), assuming that it

could be proven that two (2) rest period premiums are due for every workweek during the relevant time period, the potential value of this claim was estimated to be \$384,285.90 (8,597 workweeks x 2 rest period premium x average hourly rate of \$22.35).

44. Class Counsel also considered the risk of further litigating the matter, as well as significant additional costs that will be incurred by both sides if the case does not settle, as litigating a class action through class certification, trial, and/or appeals is expensive and significantly delays Class Member recovery (if any). Moreover, litigating rest period claims is inherently difficult as an employer's records, as is the case here, do not usually indicate if or when a rest period is short, late, interrupted or missed entirely. While Class Counsel disagreed with Defendant's arguments and factual contentions, Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses associate with further litigation and certification, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining certification (bringing the value of the claim closer to \$192,142.95), a discount of 50% was applied to account for the risks associated with succeeding on the merits and establishing liability on such certified claim (bringing the value of the claim closer to \$96,071.48), and a discount of 60% was applied to account for the risks associated with proving the extent of damages and obtaining an award thereof (bringing the value of the claim closer to \$38,428.59).

D. Waiting-Time Penalties for Failure to Timely Pay Wages Upon Termination

45. California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. If an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours of quitting, unless the employee has given seventy-two (72) hours of notice of his or her intention to quit, in which cases the employee is entitled to his or her wages at the time of quitting.

46. California Labor Code section 203 provides that if an employer fails to pay an employee all wages due at termination or within seventy-two (72) hours of resignation, in accordance with sections 201 and 202, then that employee's wages shall continue as a penalty

1 until paid for a period of up to thirty (30) days from the date they were due. California Labor Code
2 section 203 further provides that the statute of limitations to recover the penalty is the same as the
3 statute of limitations for recovery of the unpaid wages from which the penalties arise, i.e. three
4 years.

5 47. Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff and
6 the other Class Members all wages due to them upon termination, within the time period
7 permissible under California law. For example, Plaintiff alleged that Class Members are entitled
8 to unpaid wages as well as meal and rest period premiums, thereby triggering waiting-time
9 penalties under California Labor Code section 203.

10 48. Based on information and data provided by Defendant, it was estimated that
11 approximately one hundred and two (102) Class Members had been terminated during the three-
12 year statute of limitations applicable to this claim. Assuming that these individuals were not timely
13 paid all wages due to them upon termination, the potential value of waiting-time penalties claim
14 was estimated to be \$547,128.00 (102 individuals x [30 days x hourly rate of \$22.35 x 8 hours]),
15 or approximately \$5,364.00 per individual. However, this presumes that Plaintiff would prevail
16 on the underlying California Labor Code claims, which is necessary to show that Defendant failed
17 to timely pay wages that were due to the Class Members upon termination, and it also presumes
18 that Defendant's defenses would fail with respect to those underlying claims as well as a
19 willfulness and good-faith dispute defense with respect to waiting time penalties.

20 49. Defendant contended that no waiting-time penalties should be awarded. Defendant
21 argued that waiting-time penalties are derivative of each and every other underlying alleged
22 California Labor Code violation and contended that it paid the terminated employees all wages
23 due and owing. Moreover, Defendant emphasized that, under California Labor Code section 203,
24 employers are only obligated to pay waiting-time penalties if they "willfully" fail to pay wages
25 due and owing at the time of termination or resignation. As Title 8, California Code of
26 Regulations, section 13520 states:

27
28 A willful failure to pay wages within the meaning of Labor Code
Section 203 occurs when an employer intentionally fails to pay wages

1 to an employee when those wages are due. However, a good faith
2 dispute that any wages are due will preclude imposition of waiting time
3 penalties under Section 203.

4 A “good faith dispute” that any wages are due occurs when an
5 employer presents a defense, based in law or fact, which, if successful,
6 would preclude any recovery on the part of the
7 employee. The fact that a defense is ultimately unsuccessful will not
8 preclude a finding that a good faith dispute did exist. Defenses
9 presented which, under all the circumstances, are unsupported by any

10 evidence, are unreasonable, or are presented in bad faith, will preclude
11 a finding of a “good faith dispute.”

12 50. Accordingly, to assess the likely recovery of waiting-time penalties, Class Counsel
13 also took into consideration the chances of prevailing on each of the underlying causes of action,
14 as well as the additional hurdles of prevailing on the claim for waiting-time penalties, including
15 the inherent difficulty in proving the “willful” prong of section 203, applicable case law, costs and
16 expenses associated with further litigation and certification, the circumstances and realities of the
17 case, and risks to recovery, and applied appropriate discounts for them. At this juncture, a discount
18 of 40% was applied to account for the risks associated with obtaining and maintaining certification
19 (bringing the value of the claim closer to \$328,276.80), a discount of 50% was applied to account
20 for the risks associated with succeeding on the merits and establishing liability on such certified
21 claim (bringing the value of the claim closer to \$164,138.40), and a discount of 75% was applied
22 to account for the risks associated with proving the extent of damages and obtaining an award
23 thereof (bringing the value of the claim closer to \$41,034.60).

24 **E. Non-Compliant Wage Statements**

25 51. Plaintiff contended that Defendant failed to provide Plaintiff and Class Members
26 with compliant, accurate, and itemized wage statements pursuant to California Labor Code section
27 226 *et seq.* Plaintiff contended that such failure to comply was intentional and willful, and that
28 the deficiencies included, but were not limited to: the failure to list all applicable hourly rates of
pay; total number of hours worked; total hours of other nonproductive time, the rate of
compensation, and the gross wages paid for that time during the pay period; list total hours of
compensable rest and recovery periods, the rate of compensation, and the gross wages paid for
those periods during the pay period; list gross and net wages earned; and derivative violations

1 predicated on Plaintiff's other alleged Labor Code violations, i.e. Plaintiff's unpaid wages and
2 meal and rest period claims.

3 52. California Labor Code section 226(a) provides that every employer shall furnish
4 each of his or her employees an accurate itemized statement in writing showing (1) gross wages
5 earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any
6 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that
7 all deductions made on written orders of the employee may be aggregated and shown as one item,
8 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
9 name of the employee and his or her social security number, (8) the name and address of the legal
10 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
11 the corresponding number of hours worked at each hourly rate by the employee. Also, California
12 Labor Code section 226.2(a)(2) provides that the itemized wage statement must also include total
13 hours of compensable rest and recovery periods, the rate of compensation, and the gross wages
14 paid for those periods during the pay period, and except for employers paying an hourly rate of at
15 least the applicable minimum wage for all hours worked in addition to paying any piece-rate
16 compensation, the itemized wage statement must also include the total hours of other
17 nonproductive time, the rate of compensation, and the gross wages paid for that time during the
18 pay period.

19 53. Plaintiff contended that, as a result of Defendants' violation of California Labor
20 Code section 226 *et seq.*, Plaintiff and the other Class Members suffered injury and damage to
21 their statutorily-protected rights, and that Defendant's violation was intentional and willful.

22 54. Labor Code Section 226(e)(1) provides that an "employee suffering injury as a result
23 of a knowing and intentional failure by an employer to comply with [section 226(a)] is entitled to
24 recover the greater of all actual damages of fifty dollars (\$50) for the initial pay period in which a
25 violation occurs and one hundred dollars (\$100) per employee for each initial violation in a
26 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000)."

27 55. Class Counsel considered information obtained through investigations and from
28 Class Members, as well as large volume of pages of information, documents, and class data

1 provided by Defendant, and created damages/valuation models prior to the mediation. Based
2 thereon, and even when utilizing the updated class statistics through September 12, 2023 (noted
3 above), assuming that it could be proven that 100% of all wage statements issued during the
4 relevant statutory time period (i.e. 4,005 wage statements) failed to comply with Labor Code
5 section 226 *et seq.*, and that the higher violation rate of \$100 applied to each subsequent pay period
6 for each of the 90 employees applicable to this claim, the potential value of this claim was
7 estimated to be \$396,000.00 ([90 initial violations x \$50] + [3,915 subsequent violations x \$100]).

8 56. Defendant contended that no wage statement penalties should be awarded because,
9 among other things, such alleged wage statement violations, if true, were not knowing and
10 intentional violations. In addition, Defendant argued that the success of the wage statement
11 depended on the success of the underlying wage and meal and rest period claims, which Defendant
12 argued could not be certified and could not succeed on their merits, as discussed above. Defendant
13 also argued that only the lower, initial violation rate of \$50 per employee, per pay period could be
14 applicable under California law even if a wage statement violation was established.

15 57. Accordingly, to assess the likely recovery of wage statement penalties, Class
16 Counsel also took into consideration the chances of prevailing on each of the underlying causes of
17 action, as well as the additional hurdles of prevailing on the claim for wage statement penalties,
18 including proving the “knowing and intentional” prong of Section 226, applicable case law, costs
19 and expenses associated with further litigation and certification, the circumstances and realities of
20 the case, and risks to recovery, and applied appropriate discounts for them. At this juncture, a
21 discount of 30% was applied to account for the risks associated with obtaining and maintaining
22 certification (bringing the value of the claim closer to \$277,200.00), a discount of 50% was applied
23 to account for the risks associated with succeeding on the merits and establishing liability on such
24 certified claim (bringing the value of the claim closer to \$138,600.00), and a discount of 60% was
25 applied to account for the risks associated with proving the extent of damages and obtaining an
26 award thereof (bringing the value of the claim closer to \$55,440.00).

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F. Unreimbursed Business Expenses

58. Plaintiff contended that Defendant failed to reimburse Plaintiff and other Class Members for necessary business expenses, including but not limited to, expenses for purchasing, using, replacing, maintaining, and/or repairing work attire, footwear, equipment, personal protective equipment, and tools, the costs for purchasing and using personal cellular phones or data, and travel costs including vehicle maintenance, fuel, and mileage.

59. California Labor Code section 2802 requires an employer to indemnify its employees for all necessary expenditures made by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

60. Defendant contended that it had a policy and practice of reimbursing employees for necessary business-related expenses. Defendant produced data showing it paid significant reimbursement for monthly vehicle allowances during the class period, which, based on extrapolations to the putative class, exceeded \$500,000.00. Defendant further contended it made tools available for use (including hand tools and gloves, depending on the employee), and as a result, any personal expenses for hand tools were optional and thus not reimbursable. Defendant further contended that it had a partial defense to the reimbursement claim, in that where an employee earns at least two (2) times the minimum wage, he or she may be required to maintain hand tools, in conformity with the Wage Orders and Labor Code. Defendant also contended that employees were not required to use their cellphones in connection with their job duties. Defendant also contended that, with respect to the alleged expenses for which Plaintiff and other Class Members never requested reimbursement from Defendant, Defendant did not know and had no reason to know that the alleged business-related expenses were incurred. Defendant further contended that the reason for why a Class Member undertook certain expenses, while not others, and failed to receive reimbursement for certain expenses, while not others, would raise individual issues that could not be certified.

61. Defendant also contended that the California Labor Code only requires reimbursement of “necessary” expenses—as opposed to any expense that is incurred in the course of performing work—and argued that distinguishing a necessary expense from an unnecessary one

1 would require individualized inquiry. See, Cal. Lab. Code § 2802; *Gattuso v. Harte-Hanks*
2 *Shoppers, Inc.* (2007) 42 Cal.4th 554. Furthermore, whether or not an expense was necessary,
3 would depend, in part, on the reasonableness of the employee's choice, and whether or not an
4 expense was incurred, would have to be established by way of extensive individual factual inquiry
5 and/or statistical evidence. *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th
6 1137.

7 62. If Plaintiff proved that Defendant willfully failed to reimburse necessary business-
8 related expenses to Class Members in the amount of five dollars (\$5.00) each per workweek during
9 the relevant time period, the potential value of this claim would be \$42,985.00 (8,597 total
10 workweeks x \$5.00 business expenses). Class Counsel also took into consideration that, not only
11 would it have to be established that expenses were incurred, but also that the nature of the expenses
12 were such that Defendant was required to reimburse them. While Class Counsel disagreed with
13 Defendant's arguments and factual contentions, Class Counsel considered Defendant's arguments,
14 applicable case law and regulations, the costs and expenses associated with further litigation and
15 certification, the circumstances and realities of the case, and risks to recovery, and applied
16 appropriate discounts for them. At this juncture, a discount of 40% was applied to account for the
17 risks associated with obtaining and maintaining certification (bringing the value of the claim closer
18 to \$25,791.00), a discount of 60% was applied to account for the risks associated with succeeding
19 on the merits and establishing liability (bringing the value of the claim closer to \$10,316.40), and
20 a discount of 75% was applied to account for the risks associated with proving the extent of
21 damages and obtaining an award thereof (bringing the value of the claim closer to \$2,579.10).

22 **G. Unfair Business Practices**

23 63. Based on his underlying wage and hour claims, Plaintiff alleged that Defendant
24 violated California's Unfair Competition Law, Business and Professions sections 17200, *et seq.*
25 ("UCL") which prohibits any "unlawful, unfair or fraudulent business practices." A violation of
26 the UCL may be predicated on the violation of any law.

27 64. Arguably, California Business and Professions Code section 17208 extends the
28 statute of limitations on Plaintiff's other allegations, which qualify as unfair business practices, to

1 four (4) years. However, claims brought under the UCL are equitable actions for injunctive or
2 restitutionary relief, and a court may take into consideration equitable defenses when fashioning
3 equitable remedies. Restitution under the UCL is limited to returning to Plaintiff and putative
4 class members monies unlawfully withheld, such as unpaid wages or unpaid meal or rest period
5 premiums, or restitutionary disgorgement.

6 65. Plaintiff contended that each of Defendant's alleged violations of the California
7 Labor Code constitute business practices that are either unlawful (i.e., are forbidden by law) and/or
8 unfair (i.e., harm to victim outweighs any benefit). In order to prevail on the UCL cause of action,
9 Plaintiff would have to prove that Defendant violated the predicate provisions of law, and that the
10 violations constitute unlawful and/or unfair business acts and practices in violation of California
11 Business and Professions Code sections 17200, *et seq.* Plaintiff would have to prove that
12 Defendant's conduct throughout the time period at issue has been unfair, unlawful, harmful, and
13 injurious to Plaintiff and putative class members. With respect to the UCL's standing requirement,
14 Plaintiff would also have to prove that they suffered an economic injury as a result of Defendant's
15 conduct.

16 66. As discussed above, Defendant vigorously challenged the likelihood of Plaintiff's
17 success in establishing that any of provisions of the California Labor Code, on which the UCL
18 claim is predicated, were violated and that such violations were injurious. Defendant also
19 challenged Plaintiff's standing and adequacy to assert class claims and contended there were
20 individualized issues that would pose challenges to certification. When assessing the likelihood
21 of prevailing on this cause of action, Class Counsel considered all of the above, as well as
22 Defendant's factual contentions and legal arguments, the chances of prevailing on the other causes
23 of action, costs and expenses associated with further litigation and certification, and risks to
24 recovery, and applied appropriate discounts for settlement purposes. Since restitution under the
25 UCL is limited to returning to Plaintiff and Class Members monies unlawfully withheld, such as
26 unpaid wages or unpaid meal or rest period premiums, or restitutionary disgorgement, the value
27 of the unfair competition claim is encompassed by Plaintiff's other claims.

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1 **H. PAGA Penalties**

2 67. Plaintiff contended that the various alleged violations, by Defendant, of the
3 California Labor Code gave rise to civil penalties that are recoverable under PAGA, California
4 Labor Code section 2698 *et seq.*

5 68. PAGA establishes that any provision of the California Labor Code which provides
6 for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions,
7 commissions, boards, agencies or employees for a violation of the California Labor Code, may be
8 recovered through a civil action brought by an aggrieved employee on behalf of himself or herself,
9 and other current or former employees.

10 69. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
11 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
12 Workforce Development Agency for the enforcement of labor laws and education of employers
13 and employees about their rights and responsibilities, and twenty-five percent (25%) to the
14 aggrieved employees.

15 70. Class Counsel considered information obtained through investigations and from
16 aggrieved employees, as well as a large volume of information, documents, and aggrieved
17 employee data provided by Defendant, and created penalties/valuation models prior to the
18 mediation. Based thereon and the current state of the law, it was determined that the potential
19 value of civil penalties would depend on the exact methodology the trial court would use to assess
20 penalties, and could be in the range of \$144,000.00 (using the statutorily-delineated penalty
21 amounts under California Labor Code sections 558, 226.3, 1197.1, 210, 2699(f), and 1174.5, in
22 the aggregate amount of \$1,600 per person for approximately 90 individuals) and \$792,000.00
23 (assuming that it could be proven that 100% of all 4,005 weekly pay periods during the relevant
24 period were to be assessed PAGA penalties for failure to comply with the California Labor Code
25 and that the higher violation rate of \$200 applied to each subsequent pay period for each aggrieved
26 employee ([90 initial violations x \$100] + [3,915 subsequent violations x \$200])).

27 71. Defendant argued that the success of the PAGA claim depended on the success of
28 the underlying claims, which Defendant argued had no merit, as discussed above. Defendant also

1 argued that the individualized inquiries needed for each such claim would render any PAGA trial
2 unmanageable and that it would thus be able to strike the PAGA claim prior to or during trial.
3 Defendant also argued that only the lower, initial violation rate per employee, per pay period could
4 be applicable under California law even if PAGA penalties were established, and that even that
5 amount would be reduced by the Court pursuant to PAGA's express authority to reduce PAGA
6 penalty amounts that would result in an award that is unjust, arbitrary and oppressive, or
7 confiscatory, under California Labor Code section 2699(e)(2). Defendant denied and continues to
8 deny that it ever violated any provision of the California Labor Code. Class Counsel considered
9 the fact that, even if, *arguendo*, such violations occurred, Defendant may not be treated as having
10 engaged in willful violations or subsequent violations giving rise to heightened penalties unless it
11 can be shown to have notice that it was violating the law. See, e.g., *Amaral v. Cintas Corp. No. 2*
12 *(2008)* 163 Cal.4th 1157, 1209. Class Counsel considered that "PAGA's penalty provisions are
13 subject to a variety of equitable factors which" call for "qualitative evaluation and weighing of a
14 variety of factors" by the trial court. *Laface v. Ralphs Grocery Co.* (Cal. Ct. App. 2022) 75
15 Cal.App.5th 388, 458. Class Counsel considered that a court may reduce the amount of PAGA
16 penalties awarded to an employee based upon discretionary factors other than the employer's
17 ability to pay, and that many trial courts have significantly reduced PAGA civil penalties or
18 altogether declined to award PAGA civil penalties. *Fleming v Covidien, Inc.* (C.D. Cal. Aug. 12,
19 2011) No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, at **8-9 (Out of
20 \$2,800,000 PAGA penalties requested, the court awarded \$500,000.); *Thurman v. Bayshore*
21 *Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136, *disapproved on other grounds* (Out
22 of \$512,000 PAGA penalties requested, the court awarded \$358,588.); *Aguirre v Genesis Logistics*
23 (C.D. Cal. Dec. 30, 2013) No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820, at
24 **6-7 (Out of \$1,800,000 PAGA penalties requested, the court awarded \$500,000.); *Halevi v*
25 *Aroma Bakery Café, Inc.* (Aug. 30, 2013) Los Angeles County Superior Court No. 468146 (The
26 court declined to award PAGA penalties after trial, although at trial the court awarded wages to
27 class, on the basis that, *inter alia*, action was not prompted by availability of PAGA penalties,
28 penalties were not necessary to remedy ongoing or future violations, and plaintiffs did not offer

evidence establishing imposition of penalties on individual defendants would not be confiscatory.); *Makabi v Gedalia* (Mar. 2, 2016) No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at **6-7 (Noting that the trial court found in favor of plaintiffs on California Labor Code violation claims, but declined to award any PAGA penalties.); *Arnold v San Diego Second Chance Program* (Dec. 18, 2017) San Diego County Superior Court No. 37-2016-00018375 (No PAGA penalties awarded.); *Felczer v Apple Inc.* (Sept. 13, 2017) San Diego County Superior Court No. 37-2011-00102593 (No PAGA penalties awarded.); *Allen v American Multi-Cinema* (July 24, 2016) Alameda County Superior Court No. RG11585502 (No PAGA penalties awarded.); *Atempa v Pama* (July 31, 2015) San Diego County Superior Court (Out of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00.); *Driscoll v Granite Rock* (Sept. 20, 2011) Santa Clara County Superior Court No. 1-08-cv-103426 (The court declined to award PAGA penalties.); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (The court declined to award PAGA penalties after trial.); *Morales v Bridgestone Retail Operations LLC* (Aug. 2, 2018) Orange County Superior Court No. 30-2017-00900244 (Out of \$7 million PAGA penalties requested, the court awarded \$425,000.); *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (Out of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation.). This impacts whether or not the PAGA claim will be found to be manageable, whether or not Plaintiff will prevail on the merits and establish entitlement to penalties, and the extent of penalties likely to be assessed.

72. Accordingly, to assess the likely recovery of PAGA penalties, Class Counsel also took into consideration the chances of prevailing on each of the underlying causes of action, as well as the additional hurdles of prevailing on the claim for PAGA penalties, including the potential lower amount of any penalty recovery, applicable case law, costs and expenses associated with further litigation and certification, the circumstances and realities of the case, and risks to recovery, and applied appropriate discounts for them. Using the higher potential civil penalties amount, at this juncture, a discount of 50% was applied to account for the risks associated with obtaining and maintaining the PAGA claim and the risk of an unmanageability ruling (bringing

1 the value of the claim closer to \$396,000.00), a discount of 60% was applied to account for the
2 risks associated with succeeding on the merits and establishing liability (bringing the value of the
3 claim closer to \$158,400.00), and a discount of 70% was applied to account for the risks associated
4 with proving the extent of penalties and obtaining an award thereof (bringing the value of the claim
5 closer to \$47,520.00).

6 **I. Additional Defenses**

7 73. Defendant also asserted an additional defense to the claims. Defendant argued that
8 prior to the filing of this action, it implemented a lawful arbitration program. Defendant contends
9 that the arbitration agreement employees signed required arbitration on an individual basis, and
10 included a class action waiver. Defendant contended that in excess of thirty (30) employees
11 executed an arbitration agreement, and as a result, these persons could not participate in a class
12 action lawsuit. Defendant argued that these thirty employees comprised a significant portion (i.e.,
13 about half) of the workweeks at issue. Plaintiff's counsel reviewed the agreement. While Plaintiff
14 maintains there are defenses to enforcing the agreement (i.e. reasons why the arbitration agreement
15 would not be enforceable) and that the agreement would not provide a complete defense against
16 class claims, Plaintiff determined it provided further significant risk of certifying a class of all
17 current and former non-exempt employees, and potential defenses to the ability of a portion of the
18 class to participate in this lawsuit.

19 **J. Summary**

20 74. The foregoing discussion confirms that the amount of the Settlement is adequate in
21 light of the merits of this case, Plaintiff's allegations and causes of action, the evidence at issue
22 with respect to those allegations and causes of action, and legal and factual arguments and
23 circumstances which pose challenges to monetary recovery. Class Counsel estimates that the
24 potential value to be recovered if Plaintiff were fully successful at trial on all of the claims is
25 \$2,763,114.25, and the total risk-adjusted value that could reasonably be expected to be awarded
26 at trial, taking into account the likelihood of prevailing and other attendant risks, is \$257,088.13.
27 Accordingly, the Gross Settlement Amount of \$547,000.00 is within the range of reasonable
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recovery. It represents approximately 19.80% of the potential maximum value and 212.77% of the risk-adjusted value of the claims.

Principle Claim	Potential Maximum Value	Risk-Adjusted Realistic Value
Failure to Pay Overtime Wages	\$288,214.40	\$34,585.73
Failure to Pay Minimum Wages, Plus Liquidated Damages	\$120,358.00	\$14,442.96
Failure to Provide Compliant Meal Periods and Associated Premiums	\$192,142.95	\$23,057.15
Failure to Provide Compliant Rest Periods and Associated Premiums	\$384,285.90	\$38,428.59
Failure to Timely Provide Wages and Waiting-Time Penalties	\$547,128.00	\$41,034.60
Non-Compliant Wage Statements	\$396,000.00	\$55,440.00
Failure to Reimburse Business Expenses	\$42,985.00	\$2,579.10
Unfair Business Practices	See above items	
PAGA Penalties	\$792,000.00	\$47,520.00
Total:	\$2,763,114.25	\$257,088.13

75. The conclusion to be drawn from the foregoing analysis is that neither class certification, liability, nor the ability to adjudicate and/or recover monetary relief on a class-wide basis is clear-cut, which is why the Parties elected to settle this matter. Class Counsel recognized the circumstances and realities of the case, applicable case law and regulations, the costs and expenses of further litigation and certification, and risks to recovery and applied appropriate discounts as discussed above. This Settlement involves highly disputed claims and, like most other settlements, is the product of an arm's-length compromise.

76. Class Counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class. Class Counsel also submits that the Settlement and accompanying moving papers satisfy the requirements set forth in the Class Action Case Management Order #1 issued by the Court. Class Counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

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

3 Executed on this 2nd day of October 2023, at Glendale, California.

4
5 /s/ Vartan Madoyan
6 Vartan Madoyan
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EXHIBIT 1

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE**

2 This Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement,”
3 “Agreement” or “Settlement Agreement”) is made and entered into by and between Plaintiff Jesse
4 Joerger (“Plaintiff” or “Class Representative”), individually, on behalf of all others similarly situated
5 and on behalf of the State of California with respect to PAGA Aggrieved Employees (as defined herein),
6 and Defendant IES Residential Inc. (“Defendant”) (collectively, Plaintiff and Defendant are referred to
7 as the “Parties”).

8 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as defined
9 herein), the State of California with respect to PAGA Aggrieved Employees (as defined herein) and on
10 Defendant, subject to the terms and conditions hereof and the approval of the Court.

11 **RECITALS**

12 1. On December 16, 2022, Plaintiff filed a Class Action Complaint for Damages, thereby
13 commencing a putative class action entitled *Jesse Joerger v. IES Residential Inc.*, in the Superior Court
14 of California for the County of Riverside, Case No. CVRI2205490 (“Action”) against Defendant. The
15 Action alleges that Defendant failed to pay minimum and overtime wages, provide compliant meal and
16 rest periods and associated premium payments, timely pay wages during and after employment and pay
17 associated waiting-time penalties, provide compliant wage statements, maintain requisite payroll records,
18 and reimburse necessary business-related expenses in violations of the California Labor Code. On June
19 27, 2023, Plaintiff provided notice by electronic upload to the Labor and Workforce Development Agency
20 (“LWDA”) and written notice by certified mail to Defendant of the specific provisions of the California
21 Labor Code that were violated (“PAGA Notice”). Plaintiff filed or will file a First Amended Class Action
22 Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor
23 Code § 2698, *Et Seq.* (“Operative Complaint”). The Operative Complaint alleges or will allege eleven
24 (11) causes of action against Defendant for violations of the California Labor Code for failure to pay
25 minimum and overtime wages, provide compliant meal and rest periods and associated premium
26 payments, timely pay wages during and after employment and pay associated waiting-time penalties,
27 provide compliant wage statements, maintain requisite payroll records, and reimburse necessary business-
28 related expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based

1 on the aforementioned California Labor Code violations, and for civil penalties under the Private
2 Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq.* (“PAGA”) based
3 on the aforementioned California Labor Code violations.

4 2. Defendant denies all material allegations set forth in the Action and Operative Complaint
5 and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further
6 litigation, Defendant desires to fully and finally settle the Action, the Released Class Claims, and the
7 Released PAGA Claims.

8 3. Class Counsel in the Action diligently investigated the claims against Defendant,
9 including any and all applicable defenses and the applicable law. The investigation included, *inter alia*,
10 the exchange of a volume of information, data, and documents obtained from Plaintiff, Defendant, and
11 other sources, and review of Defendant’s employment and operations policies, practices, and practices.

12 4. On June 5, 2023, the Parties participated in mediation with Judge S. James Otero (Ret.)
13 (the “Mediator”), a respected mediator of complex wage and hour actions. Shortly thereafter, the
14 mediator made a mediator’s proposal, and with the assistance of the Mediator’s evaluations, the Parties
15 reached the settlement that is memorialized herein. The settlement discussions were conducted at arm’s-
16 length, and the Settlement is the result of an informed and detailed analysis of Defendant’s potential
17 liability and exposure in relation to the costs and risks associated with continued litigation. Based on
18 the information, documents, and data obtained, and Class Counsel’s own independent investigation and
19 evaluation, Class Counsel believes that the settlement with Defendant for the consideration and on the
20 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest
21 of the Class Members and the State of California in light of all known facts and circumstances, including
22 the risk of significant delay and uncertainty associated with litigation and various defenses asserted by
23 Defendant.

24 5. The Parties expressly acknowledge that this Settlement Agreement is entered into solely
25 for the purpose of compromising significantly disputed claims and that nothing herein is an admission
26 of liability or wrongdoing by Defendant. If for any reason the Settlement Agreement is not approved,
27 it will be of no force or effect, and the Parties shall be returned to their original respective positions.

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DEFINITIONS

6. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

a. “Attorneys’ Fees and Costs” means attorneys’ fees for Class Counsel’s litigation and resolution of the Action and all actual costs incurred and to be incurred by Class Counsel in the Action, as set forth in Paragraph 10 below.

b. “Class Counsel” means Arby Aiwazian, Joanna Ghosh, and Vartan Madoyan of Lawyers *for* Justice, PC, who will seek to be appointed counsel for the Class.

c. “Class List” means a complete list of all Class Members that Defendant will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet and will include each Class Member’s last-known full name, mailing address, telephone number, Social Security Number, start date of employment and end date of employment (or, if applicable, date of conversion to exempt status) as a non-exempt or hourly-paid employee of Defendant in California during the Class Period, and such other information as is necessary for the Settlement Administrator to calculate Workweeks (as defined below).

d. “Class Member(s)” or “Class” means all current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California at any time during the Class Period.

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as “**Exhibit A.**”

f. “Class Period” means the time period from October 6, 2018, to the date the Court grants Preliminary Approval, or an earlier date pursuant to Paragraph 35 of this Agreement (if applicable).

g. “Class Representative” or “Plaintiff” means Jesse Joerger.

h. “Class Settlement” means the settlement and resolution of all Released Class Claims.

i. “Court” means the Superior Court of the State of California for the County of Riverside.

j. “Defendant” means IES Residential Inc.

k. “Defendant’s Counsel” means Jesse Ferrantella, and Keenan O’Connor of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

l. “Effective Date” means the later of (a) the day after the last day on which any appeal might be filed with respect to the Final Approval Order and Judgment, assuming no appeal is filed, or (b) the date of successful resolution of any appeal(s) with respect to Final Approval Order and Judgment – including expiration of any time to seek reconsideration of further review.

m. “Employer Taxes” means the employer’s share of applicable payroll taxes due on the portion of Individual Settlement Shares allocated to wages, which shall be paid by Defendant in addition to the Gross Settlement Amount.

n. “Final Approval” means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

o. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

p. “Individual PAGA Payment” means the *pro rata* share of the PAGA Aggrieved Employee Amount that a PAGA Aggrieved Employee may be eligible to receive for the PAGA Settlement, to be calculated in accordance with Paragraph 15.

q. “Individual Settlement Payment” means the net payment of each Settlement Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided herein.

r. “Individual Settlement Share” means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive for the Class Settlement, to be calculated in accordance with Paragraph 14.

s. “LWDA Payment” means the amount of Fifty-Six Thousand Two Hundred and Fifty Dollars (\$56,250.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the State of California for the PAGA Settlement, as set forth in Paragraph 13.

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t. “Gross Settlement Amount” means the amount of Five Hundred Forty-Seven Thousand Dollars (\$547,000.00) to be paid by Defendant in full resolution of all Released Class Claims, Released PAGA Claims, and the Action, which includes all Attorneys’ Fees and Costs, Class Representative Enhancement Payment, PAGA Amount to be paid to the State of California and PAGA Aggrieved Employees, Net Settlement Amount to be paid to the Settlement Class Members, and Settlement Administration Costs. Defendant shall pay the Employer Taxes separately and in addition to the Gross Settlement Amount. The Gross Settlement Amount is subject to increase, as provided in Paragraph 35 below.

u. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount less the Court-approved Class Representative Enhancement Payment, Settlement Administration Costs, PAGA Amount, and Attorneys’ Fees and Costs.

v. “Objection” means a Class Member’s objection to the Class Settlement, which can be made orally at the Final Approval Hearing and/or in writing on or before the Response Deadline. A written Objection must either be presented by completing and submitting the Objection Form (in substantially the form attached hereto as “**Exhibit B**” subject to Court approval) by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline, or by way of writing that must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline. Class Members who do not opt out of the Class Settlement, can object to the Class Settlement. Neither Class Members nor PAGA Aggrieved Employees can object to the PAGA Settlement.

w. “PAGA Amount” means the allocation of Seventy-Five Thousand Dollars (\$75,000.00) from the Gross Settlement Amount for the settlement and resolution of the Released PAGA Claims. Seventy-five percent (75%) of the PAGA Allocation, or \$56,250.00, will be paid to the LWDA

(i.e., the LWDA Payment) and the remaining twenty-five percent (25%), or \$18,750.00, will be distributed to PAGA Aggrieved Employees (i.e., the PAGA Aggrieved Employee Amount).

x. “PAGA Aggrieved Employees” means all current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California at any time during the PAGA Period.

y. “PAGA Aggrieved Employee Amount” means the amount of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), i.e., 25% of the PAGA Amount, to be distributed to the PAGA Aggrieved Employees on a *pro rata* basis based on their Workweeks.

z. “PAGA Period” means October 11, 2021, to the date the Court grants Preliminary Approval, or an earlier date pursuant to Paragraph 35 of this Agreement (if applicable).

aa. “PAGA Settlement” means the settlement and resolution of Released PAGA Claims.

bb. “PAGA Workweeks” means Aggrieved Employees’ number of Workweeks (as defined below) during the PAGA Period.

cc. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either Plaintiff or Defendant.

dd. “Preliminary Approval” means entry of the Court order granting preliminary approval of the Settlement Agreement.

ee. “Released Class Claims” means all claims, causes of action, and theories of relief alleged in the Operative Complaint or that reasonably could have been alleged based on the facts contained in the Operative Complaint, arising during the Class Period, including all of the following: violations of the California Labor Code and applicable Industrial Welfare Commission Wage orders for failure to pay all regular wages, minimum wages, and overtime wages due; failure to properly calculate the regular rate of pay for payment of overtime wages; failure to provide proper meal periods, and to properly provide premium pay in lieu thereof; failure to provide proper rest periods, and to properly provide premium pay in lieu thereof; failure to pay all wages timely during employment; (6) failure to pay all wages timely at the time of termination; failure to provide complete, accurate, or properly formatted wage statements; failure to keep required payroll records; and failure to reimburse business

1 expenses; as well as for unfair business practices in violation of California Business of Professions Code
2 § 17200, *et seq.* based on the aforementioned.

3 ff. “Released PAGA Claims” means all claims for civil penalties under the Private
4 Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* which arose during the PAGA
5 Period and could have been sought by the California Labor Commissioner premised on the violations
6 of law identified in Plaintiff’s June 27, 2023 letter to the Labor Workforce Development Agency, its
7 enclosures, and any supplemental correspondence to the LWDA, and only to the extent they are alleged
8 in the Operative Complaint.

9 gg. “Released Parties” means Defendant and its current and former officers, directors,
10 employees, and agents.

11 hh. “Request for Exclusion” means a Class Member’s request to be excluded from
12 the Class Settlement. A Request for Exclusion must either be presented by completing and submitting
13 the Request for Exclusion Form (in substantially the form attached hereto as “**Exhibit C**” subject to Court
14 approval) by mail to the Settlement Administrator at the specified address, postmarked on or before the
15 Response Deadline, or by way of writing that must: (a) contain the case name and number of the Action;
16 (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits
17 of Social Security Number; (c) contain a clear written statement indicating that the Class Member seeks
18 exclusion from the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at
19 the specified address, postmarked on or before the Response Deadline. In accordance with California
20 law, Class Members and PAGA Aggrieved Employees cannot use the Request for Exclusion Form to
21 exclude themselves from the PAGA Settlement.

22 ii. “Response Deadline” means the deadline by which Class Members must submit
23 a Request for Exclusion, written Objection, and/or Workweeks Dispute, which shall be the date that is
24 sixty (60) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator,
25 unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
26 extended to the next day on which the U.S. Postal Service is open. In the event that a Notice Packet is
27 re-mailed to a Class Member, the Response Deadline for that Class Member shall be extended by fifteen
28 (15) calendar days from the initial Response Deadline.

jj. “Settlement Administrator” means Phoenix Settlement Administrators, or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for purposes of administering this Settlement. The Parties and their counsel each represent that 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. Defendant and Defendant’s counsel shall not enter into any contractual relationship with the Settlement Administrator.

kk. "Settlement Administration Costs" means the costs payable from the Gross Settlement Amount, subject to Court approval, to the Settlement Administrator for administering this Settlement, as set forth in Paragraph 12 below.

11. “Settlement Class Member(s)” or “Settlement Class” means all Class Members who do not submit a timely and valid Request for Exclusion.

mm. “Workweeks” means the number of calendar weeks each Class Member was employed by Defendant as a hourly-paid or non-exempt employee in California during the Class Period, which will be calculated by the Settlement Administrator by counting, for each Class Member, the weeks elapsed between (i) the later of (a) the Class Member’s start date of employment and (b) October 6, 2018 and (ii) the earlier of (a) the Class Member’s end date of employment (or, if applicable, date of conversion to exempt status), and (b) the end date of the Class Period.

nn. “Workweeks Dispute” means a Class Member’s written letter disputing the pre-printed information on the Class Notice as to his or her Workweeks, which must: (a) contain the case name and number of the Action; (b) contain the Class Member’s full name, signature, address, telephone number, and last four (4) digits of Social Security Number; (c) clearly state that the Class Member disputes of the number of Workweeks credited to him or her and what he or she contends is the correct number to be credited to him or her; (d) attach any documentation that he or she has to support the dispute; and (e) be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

CLASS CERTIFICATION

7. For the purposes of this settlement only, the Parties stipulate to the certification of the Class.

8. The Parties agree that certification for the purpose of settlement is not an admission that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be inappropriate in a non-settlement context for this or any other action against Defendant.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

9. Funding and Disbursement of the Gross Settlement Amount. Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will provide the Parties with an accounting estimate of the amounts to be paid by Defendant pursuant to the terms of the Settlement and establish a qualified settlement account for administration of the Settlement. Within thirty (30) calendar days after the Effective Date, Defendant will make a one-time deposit of the Gross Settlement Amount plus an amount sufficient for Employer's Taxes into the settlement account to be established by the Settlement Administrator. Within seven (7) calendar days of the funding of the Gross Settlement Amount and an amount sufficient for Employer Taxes, the Settlement Administrator will issue payments due under the Settlement and approved by the Court, as follows: (a) Individual Settlement Payments to Settlement Class Members; (b) Individual PAGA Payments to PAGA Aggrieved Employees; (c) LWDA Payment to the State of California; (d) Class Representative Enhancement Payment to Plaintiff; (e) Attorneys' Fees and Costs to Class Counsel; and (f) Settlement Administration Costs to itself (the Settlement Administrator). The Settlement Administrator will also undertake filings and remittances in connection with the employee's share of taxes on the wages portion of Individual Settlement Shares and the Employer Taxes, that are necessary for administration of the Settlement.

10. Attorneys' Fees and Costs. Class Counsel will request and Defendant will not oppose attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., up to \$191,450.00 if the Gross Settlement Amount is \$547,000.00) and reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement of the Action, supported by declaration, in an

1 amount not to exceed Fifteen Thousand Dollars (\$15,000.00), both of which will be paid from the Gross
2 Settlement Amount subject to Court approval. These amounts will cover any and all work performed
3 and any and all costs incurred by Class Counsel in connection with the litigation of the Action, including
4 without limitation all work performed and costs incurred to date, and all work to be performed and all
5 costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement,
6 including any objections raised and any appeals necessitated by those objections. Class Counsel shall
7 be solely and legally responsible for correctly characterizing this compensation for tax purposes and for
8 paying any taxes on the amounts received. With respect to the Attorneys' Fees and Costs to Class
9 Counsel, the Settlement Administrator may purchase an annuity to utilize United States Treasuries and
10 bonds or utilize other attorney fee deferral vehicles, for Class Counsel and any additional expenses for
11 doing so shall be paid separately by Class Counsel and shall not be included within the Settlement
12 Administration Costs. Defendant and Defendant's Counsel shall not be liable for any expenses
13 associated with the purchase or use of any attorney fee deferral vehicles for Class Counsel by the
14 Settlement Administrator. Even in the event that the Court reduces or does not approve the requested
15 the Attorneys' Fees and Costs to Class Counsel, neither Plaintiff nor Class Counsel shall have the right
16 to revoke this Agreement, and it will remain binding. Any portion of the Attorneys' Fees and Costs not
17 awarded to Class Counsel shall be a part of the Net Settlement Amount for the benefit of Settlement
18 Class Members.

19 11. Class Representative Enhancement Payment. In recognition of his efforts and work in
20 prosecuting the Action, Defendant agrees not to oppose or impede any application or motion for an
21 Enhancement Payment to Plaintiff in an amount up to Nine Thousand Dollars (\$9,000.00). The Class
22 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount, subject
23 to Court approval, will be in addition to his Individual Settlement Payment and Individual PAGA
24 Payment that is to be paid pursuant to the Settlement. The Settlement Administrator will issue an IRS
25 Form 1099 to Plaintiff for the Enhancement Payment, and Plaintiff shall be solely and legally responsible
26 for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts
27 received. Should the Court approve the Class Representative Enhancement Payment to Plaintiff in an
28 amount that is less than that set forth above, Plaintiff shall not have the right to revoke this Agreement,

1 and it will remain binding, and the difference between the lesser amount approved by the Court and the
2 amount allocated toward the Class Representative Enhancement Payment will be part of the Net
3 Settlement Amount for the benefit of Settlement Class Members.

4 12. Settlement Administration Costs. The Settlement Administrator will be paid for the
5 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,
6 which is currently estimated not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00). These
7 costs, which will be paid from the Gross Settlement Amount, subject to Court approval, will include,
8 *inter alia*, translating the Notice Packet into Spanish, printing, distributing, and tracking Notice Packets
9 and other documents for this Settlement, calculating and distributing payments due under the Settlement,
10 issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and
11 remittances, providing necessary reports and declarations, and other duties and responsibilities set forth
12 herein to process this Settlement, and as requested by the Parties. To the extent actual Settlement
13 Administration Costs are greater than the estimated amount stated herein, such excess amount will be
14 deducted from the Gross Settlement Amount, subject to approval by the Court. Any portion of the
15 estimated, designated, and/or awarded Settlement Administration Costs which are not in fact required to
16 fulfill payment to the Settlement Administrator to undertake the requirement settlement administration
17 duties will be part of the Net Settlement Amount for the benefit of Settlement Class Members. Plaintiff,
18 Class Counsel, Defendant, and Defendant's Counsel shall not bear any responsibility for the Settlement
19 Administrator's errors or omissions in the calculation or distribution of the payments under the
20 Settlement or the development of the list of recipients of payments under the Settlement.

21 13. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of
22 Seventy-Five Thousand Hundred Dollars (\$75,000.00) from the Gross Settlement Amount will be
23 allocated toward penalties under the Private Attorneys General Act, California Labor Code Section
24 2698, *et seq.* (i.e., the PAGA Amount), of which seventy-five percent (75%), or \$56,250.00, will be paid
25 to the State of California (i.e., the LWDA Payment) and twenty-five percent (25%) or, \$18,750.00, will
26 be distributed to PAGA Aggrieved Employees (i.e., the PAGA Aggrieved Employee Amount) on a *pro*
27 *rata* basis, based on their number of PAGA Workweeks (i.e., the Individual PAGA Payment).

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1 14. Individual Settlement Share Calculations. Individual Settlement Shares will be calculated
2 and apportioned from the Net Settlement Amount based on the Class Members' number of Workweeks,
3 as follows:

4 a. After Preliminary Approval of the Settlement, to determine the estimated
5 Individual Settlement Shares (for purposes of mailing the Class Notice), the Settlement Administrator
6 will use the following formula: Net Settlement Amount will be divided by the aggregate total number
7 of Workweeks of all Class Members, resulting in the "Estimated Workweek Value." Each Class
8 Member's estimated Individual Settlement Share will then be calculated by multiplying each individual
9 Class Member's total number of Workweeks by the Estimated Workweek Value.

10 b. After Final Approval of the Settlement, to determine the final Individual
11 Settlement Share (for purposes of distribution of payments under the Settlement), the Settlement
12 Administrator will divide the final, Court-approved Net Settlement Amount by the Workweeks of all
13 Settlement Class Members to yield the "Final Workweek Value," and multiply each Settlement Class
14 Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement
15 Share.

16 15. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated
17 and apportioned from the PAGA Aggrieved Employee Amount based on the PAGA Aggrieved
18 Employees' number of PAGA Workweeks (i.e., Workweeks during the PAGA Period) as follows: The
19 Settlement Administrator will divide the PAGA Aggrieved Employee Amount, i.e., 25% of the PAGA
20 Amount, by the total number of PAGA Workweeks of all PAGA Aggrieved Employees to yield the
21 "PAGA Workweek Value," and multiply each PAGA Aggrieved Employee's individual Workweeks by
22 the PAGA Aggrieved Workweek Value to yield his or her Individual PAGA Payment.

23 16. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
24 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
25 are issued to the payee. It is expressly understood and agreed that payments made under this Settlement
26 shall not in any way entitle Plaintiff, Settlement Class Members, or PAGA Aggrieved Employees to
27 additional compensation or benefits under any new or additional compensation or benefits, or any bonus,
28 contest or other compensation or benefit plan or agreement in place during the Class Period, nor will it

entitle Plaintiff, Settlement Class Members, or PAGA Aggrieved Employees to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the Class Period).

17. Delivery of the Class List. Within twenty-one (21) calendar days of Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.

18. Notice by First-Class U.S. Mail.

a. Within fourteen (14) calendar days after receiving the Class List from Defendant, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail the Court-approved Class Notice, Objection Form, and Request for Exclusion Form (together, "Notice Packet") in English and Spanish to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. With respect to Notice Packets that are returned as undeliverable on or before the Response Deadline, the Settlement Administrator will re-mail the Notice Packet within five (5) calendar days to any forwarding address that is indicated on the returned Notice, or in the event that no such forwarding address is indicated, then, the Settlement Administrator will search for an alternate address by way of skip-trace and, if an alternate address is located, will re-mail the Notice Packet within five (5) calendar days.

c. Dispute Regarding Workweeks. The Notice Packet will include the procedure by which a Class Member may dispute the number of Workweeks allocated to him or her by submitting a timely and valid Workweeks Dispute. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of Defendant's records and data as they pertain to the number of Workweeks to be credited to a disputing Class Member, Defendant's records will be presumed correct and determinative of the dispute. However, if a Class Member produces information and/or documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class Member

1 and the Settlement Administrator will resolve and determine the number of eligible Workweeks that the
2 disputing Class Member should be credited with under the Settlement. The Settlement Administrator's
3 decision on such disputes will be final and non-appealable.

4 19. Settlement Checks. The Settlement Administrator will be responsible for undertaking
5 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
6 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the
7 PAGA Aggrieved Employees in accordance with this Settlement Agreement. When issuing payments,
8 the Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA
9 Payment into one check if the intended recipient for both payments is one individual. Each Individual
10 Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred
11 and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.
12 All funds remaining in the Qualified Settlement Fund in connection with canceled checks shall be
13 distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property
14 Law, California Civil Code § 1500 *et seq.*, in the names of and for the benefit of those Settlement Class
15 Members and/or PAGA Aggrieved Employees who did not cash, deposit, or otherwise negotiate their
16 checks, until such time that they claim their property. The Parties agree that this disposition results in
17 no "unpaid residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount
18 will be paid out to Settlement Class Members, whether or not they all cash, deposit, or otherwise
19 negotiate their settlement payment checks. The Settlement Administrator shall mail a reminder postcard
20 by First Class U.S. Mail to any Settlement Class Member and/or PAGA Aggrieved Employee whose
21 Individual Settlement Payment check and/or Individual PAGA Payment check has not been negotiated
22 within sixty (60) calendar days after the date of mailing. The Settlement Administrator shall undertake
23 amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal
24 tax laws, that are necessitated due to the cancellation of any Individual Settlement Payment or Individual
25 PAGA Payment checks. Settlement Class Members whose Individual Settlement Payment checks are
26 canceled shall, nevertheless, be bound by the Class Settlement. PAGA Aggrieved Employees whose
27 Individual PAGA Payment checks are cancelled, shall, nevertheless, be bound by the PAGA Settlement.

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1 20. Procedures for Requesting Exclusion from the Class Settlement. Any Class Member
2 wishing to be excluded from the Class Settlement must submit a Request for Exclusion to the Settlement
3 Administrator, by mail, on or before the Response Deadline. The date of the postmark on the return
4 mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been
5 timely submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendant's
6 Counsel the Requests for Exclusion that were timely submitted, and also identify the individuals who
7 have submitted a timely and valid Request for Exclusion in a declaration that is to be filed with the
8 Court in advance of the Final Approval Hearing. Any Class Member who submits a timely and valid
9 Request for Exclusion is prohibited from making any objection to the Class Settlement. Any Class
10 Member who submits a timely and valid Request for Exclusion will not be bound by the Class Settlement
11 and will not be issued an Individual Settlement Payment. However, all PAGA Aggrieved Employees
12 will be bound to the release of the PAGA Settlement and will still be issued an Individual PAGA
13 Payment, irrespective of whether they submit a Request for Exclusion.

14 21. Procedures for Objecting to the Class Settlement. Class Members who have not opted
15 out of the Class Settlement (i.e., Settlement Class Members) may object to the Class Settlement orally at
16 the Final Approval Hearing and/or in writing on or before the Response Deadline. A written Objection
17 must either be presented by completing and submitting the Objection Form by mail to the Settlement
18 Administrator at the specified address, postmarked on or before the Response Deadline, or by way of
19 writing that must be signed by the Settlement Class Member and contain all information required by this
20 Settlement Agreement. The postmark date will be deemed the exclusive means for determining that the
21 Objection is timely. At no time will any of the Parties or their counsel seek to solicit or otherwise
22 encourage Class Members to object to the Settlement Agreement or appeal from the Final Approval
23 Order and Judgment. Settlement Class Members may present their objection orally at the Final
24 Approval Hearing, irrespective of whether they submit a written Objection. The Settlement
25 Administrator will certify jointly to Class Counsel and Defendant's Counsel the written Objections that
26 were timely submitted, and also attach them as exhibits to a declaration that is to be filed with the Court
27 in advance of the Final Approval Hearing.

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1 22. Reports and Declarations by the Settlement Administrator Regarding Settlement
2 Administration. The Settlement Administrator will provide Defendant's Counsel and Class Counsel a
3 weekly report which certifies: (a) the number of Class Members who have submitted a Workweeks
4 Dispute; (b) the number of Class Members who have submitted timely and valid Requests for Exclusion
5 or timely and complete written Objections; and (c) the number of undeliverable and re-mailed Notice
6 Packets. Additionally, the Settlement Administrator will provide to counsel for both Parties any updated
7 reports regarding the administration of the Settlement Agreement as needed or requested, and
8 immediately notify the Parties when it receives a request from an individual or any other entity regarding
9 inclusion in the Class and/or Settlement.

10 23. Certification of Completion. Upon completion of administration of the Settlement, the
11 Settlement Administrator will provide a written declaration under oath to certify such completion to the
12 Court and counsel for all Parties.

13 24. Treatment of Individual Settlement Payments and Individual PAGA Payments. Each
14 Individual Settlement Share will be allocated as follows: twenty percent (20%) wages and eighty percent
15 (80%) penalties, interest, and non-wage damages. The portion allocated to wages will be reported on
16 an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be
17 reported on an IRS Form-1099 (if applicable) by the Settlement Administrator. The Settlement
18 Administrator will withhold the employee's share of taxes and withholdings with respect to the wages
19 portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their
20 Individual Settlement Payments (i.e., payment of their Individual Settlement Share net of the employee's
21 share of taxes and withholdings on the wages portion of their Individual Settlement Share). The
22 Employer Taxes will be paid separately and in addition to the Gross Settlement Amount. Each Individual
23 PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an
24 IRS Form-1099 (if applicable) by the Settlement Administrator.

25 25. Administration of Taxes by the Settlement Administrator. The Settlement Administrator
26 will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA Aggrieved Employees,
27 and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
28 pursuant to this Settlement Agreement. The Settlement Administrator will also be responsible for

forwarding all payroll taxes, contributions, and withholdings to the appropriate government authorities.

26. Tax Liability. Plaintiff, Class Counsel, Defendant, and Defendant's Counsel do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement Class Members, and PAGA Aggrieved Employees understand and agree that, except for Defendant's payment of Employer Taxes, they will be solely responsible for correctly characterizing any compensation received under the Settlement on his/her personal income tax returns and paying any and all taxes due for any and all amounts paid to them under the Settlement.

27. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON

1 DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX
2 STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
3 BY THIS SETTLEMENT AGREEMENT.

4 28. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
5 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
7 of action or right herein released and discharged.

8 29. Release of Claims by Settlement Class Members and the State of California.

9 a. Class Settlement Release. Upon the Effective Date and full funding of the Gross
10 Settlement Amount, Plaintiff and all Class Members who do not submit a timely and valid Request for
11 Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever released,
12 settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims,
13 whether known or unknown. However, to be clear, the scope of the release is limited to the Released
14 Class Claims. By virtue of this Agreement, Plaintiff and the Settlement Class Members shall be deemed
15 to have, and by operation of the Final Approval Order and Judgment and upon the Effective Date and full
16 funding of the Gross Settlement Amount, shall have, fully, finally, and forever settled and released all of
17 the Released Class Claims. The Parties understand and specifically agree that the scope of the release
18 described in this paragraph is a material part of the consideration for this Agreement; was critical in
19 justifying the agreed upon economic value of this settlement and without it Defendant would not have
20 agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendant is
21 obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on
22 the facts, causes of action, and legal theories contained in the Operative Complaint.

23 b. PAGA Settlement Release. Upon the Effective Date and full funding of the Gross
24 Settlement Amount, Plaintiff and the State of California with respect to the PAGA Aggrieved
25 Employees will be deemed to have fully, finally, and forever released, settled, compromised,
26 relinquished, and discharged the Released Parties of all Released PAGA Claims. However, to be clear,
27 the scope of the release is limited to the Released PAGA Claims. By virtue of this Agreement, Plaintiff
28 and the State of California with respect to the Aggrieved Employees shall be deemed to have, and by

operation of the Final Approval Order and Judgment and upon the Effective Date and full funding of the Gross Settlement Amount, shall have, fully, finally, and forever settled and released all of the Released PAGA Claims. The Parties understand and specifically agree that the scope of the release described in this paragraph is a material part of the consideration for this Agreement; was critical in justifying the agreed upon economic value of this settlement and without it Defendant would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendant is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in the Operative Complaint.

c. The *res judicata* effect of the Final Approval Order and Judgment will be the same as that of the Class Settlement (and release of Class Released Claims), with respect to the Settlement Class Members. The *res judicata* effect of the Final Approval Order and Judgment will be the same as that of the PAGA Settlement (and release of PAGA Released Claims), with respect to the State of California and PAGA Aggrieved Employees.

30. General Release of Claims by Plaintiff. In addition, upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff will be deemed to have fully released and discharged the Released Parties of and from all claims arising from his application for employment with Defendant, employment with Defendant, separation of employment from Defendant, and any acts that have or could have been asserted in any legal action or proceeding against Defendant, whether known or unknown, arising under any federal, state, or local law, or statute, including, *inter alia*, those arising under the California Labor Code, Industrial Welfare Commission Wage Orders, Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income Security Act, National Labor Relations Act, California Corporations Code, California Business and Professions Code, California Fair Employment and Housing Act, California Constitution (all as amended), and law of contract and tort, as well as for discrimination, harassment, retaliation, wrongful termination, lost wages, benefits, other employment compensation, emotional distress, medical expenses, other economic and non-economic damages, interest, attorney fees, and costs, arising on or before the date of execution of the Settlement Agreement. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California

Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by him to exist may hereafter be discovered. It is Plaintiff's intention to settle fully and release all claims he now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

31. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.

Upon execution of this Settlement Agreement, Plaintiff shall promptly obtain a hearing date for Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will be responsible for drafting, and submit this Settlement Agreement to the Court in support of said motion. Class Counsel will provide Defendant's Counsel a draft of the preliminary approval motion for review and approval at least three court days before filing it with the Court. Defendant agrees not to oppose the motion for preliminary approval of the Settlement consistent with this Settlement Agreement. Defendant agrees to provide Class Counsel a draft of any required declarations in support of Plaintiff's motion for preliminary approval at least two court days before Plaintiff's deadline to file the motion for preliminary approval. Said motion shall apply to the Court for the entry of an order ("Preliminary Approval Order"), which shall be mutually agreed upon by the Parties, seeking the following:

- a. Conditionally certifying the Class for settlement purposes only;
- b. Granting Preliminary Approval of the Settlement;
- c. Preliminarily appointing Plaintiff as representative of the Class;
- d. Preliminarily appointing Class Counsel as counsel for the Class;
- e. Approving, as to form and content, the mutually-agreed upon and proposed Notice Packet and directing its mailing to the Class by First-Class U.S. Mail;

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1 f. Approving the manner and method for Class Members to request exclusion from
2 or object to the Class Settlement as contained herein and within the Notice Packet; and

3 g. Scheduling a Final Approval Hearing at which the Court will determine whether
4 the Settlement should be finally approved as fair, reasonable and adequate as to the Settlement Class
5 Members, State of California, and PAGA Aggrieved Employees.

6 32. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After
7 the Response Deadline, and with the Court's permission, a Final Approval Hearing will be conducted to
8 determine whether Final Approval of the Settlement should be granted, along with the amounts properly
9 payable for (a) Individual Settlement Payments; (b) Individual PAGA Payments; (c) LWDA Payment;
10 (d) Attorneys' Fees and Costs; (e) Class Representative Enhancement Payment; and (f) Settlement
11 Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days
12 after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion
13 seeking Final Approval of the Settlement. Class Counsel will provide Defendant's Counsel a draft of
14 the Final Approval motion for review and approval at least three court days before filing it with the
15 Court. By way of said motion, Plaintiff will apply for the entry of the mutually-agreed-upon proposed
16 order and judgment ("Final Approval Order and Judgment"), which will provide for, in substantial part,
17 the following:

18 a. Approval of the Settlement as fair, reasonable, and adequate, and directing
19 consummation of its terms and provisions;

20 b. Certification of the Settlement Class;

21 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

22 d. Approval of the application for Class Representative Enhancement Payment to
23 Plaintiff;

24 e. Directing Defendant to fund all amounts due under the Settlement Agreement and
25 ordered by the Court; and

26 f. Entering judgment in this Action, while maintaining continuing jurisdiction, in
27 conformity with California Rules of Court 3.769 and the Settlement Agreement.

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1 33. Termination or Revocation of Settlement.

2 a. If more than seven percent (7%) of the Class Members submit timely and valid
3 Requests for Exclusion, Defendant, in its discretion, may elect to rescind the Settlement Agreement by
4 way of writing that is provided to Class Counsel within ten (10) calendar days after the Settlement
5 Administrator notifies the Parties of the total number of timely and valid Requests for Exclusion received
6 by the Response Deadline. If Defendant exercises this option, Defendant shall pay any costs of settlement
7 administration incurred by the Settlement Administrator up until the date that Defendant gives notice to
8 the Settlement Administrator that it is exercising its right to rescind the Settlement pursuant to this
9 paragraph.

10 b. If the Court fails or refuses to issue the Final Approval Order and Judgment or fails
11 to approve any material condition of this Settlement Agreement which effects a fundamental change of
12 the Settlement Agreement (unless explicitly excepted herein), by way of writing that is provided to the
13 other Party within ten (10) calendar days thereof, the entire Settlement Agreement shall be rendered
14 voidable and unenforceable as to all Parties herein at the option of either Party.

15 34. Effects of Termination of the Settlement. Termination of the Settlement Agreement shall
16 have the following effects:

17 a. The Settlement Agreement shall be void and shall have no force or effect, and no
18 Party shall be bound by any of its terms;

19 b. In the event the Settlement Agreement is terminated, Defendant shall have no
20 obligation to make any payments to any Party, Class Member, PAGA Aggrieved Employee, or attorney,
21 except that the terminating Party shall pay the Settlement Administrator for services rendered up to the
22 date the Settlement Administrator is notified that the Settlement has been terminated;

23 c. The Preliminary Approval Order, Final Approval Order and Judgment, including
24 any order certifying the Class, shall be vacated;

25 d. The Settlement Agreement and all negotiations, statements, and proceedings
26 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be restored
27 to their respective positions in the Action prior to the execution of the Settlement Agreement;

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1 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
2 statements or filings in furtherance of the Settlement (including all matters associated with the mediation)
3 shall be admissible or offered into evidence in the Action or any other action for any purpose whatsoever;
4 and

5 f. Any documents generated to bring the Settlement into effect, will be null and
6 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
7 likewise be treated as void from the beginning.

8 g. If the Settlement is voided or fails for any reason other than revocation by
9 Defendant, pursuant to Paragraph 33(a), above, any costs incurred by the Settlement Administrator shall
10 be borne equally by the Parties.

11 35. Escalator Clause. As of June 5, 2023, Defendant represented that the Class worked a
12 total of approximately 7,825 Workweeks. If it is determined that the total number of Workweeks for
13 the Class during the Class Period exceeds 7,825 by more than ten percent (10%) (i.e. exceeds 8,608),
14 then, at Defendant's option (i.e., one of the following must occur however Defendant may choose which
15 option will occur), either of the following will occur: (a) the Gross Settlement Amount will be increased
16 by 1% for every 1% increase in Workweeks over the 10% threshold (e.g., if the threshold of 8,608
17 Workweeks is exceeded by 1%, the Gross Settlement Amount will increase by 1%) or (b) the Class
18 Period and PAGA Period will end on the day before the Workweeks reach 8,608 Workweeks.

19 36. Continued Jurisdiction. After entry of judgment pursuant to the Settlement, the Court
20 will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section
21 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and
22 enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-
23 judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

24 37. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
25 terms set forth in any attached exhibits, which are incorporated by this reference as though fully set
26 forth herein. Any exhibits to this Settlement Agreement are an integral part of the Settlement.

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1 38. Limitation on Publicity. Plaintiff and Plaintiff's Counsel agree not to disclose or
2 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations
3 underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except
4 potential Class Members and as shall be contractually required to effectuate the terms of the Settlement.
5 For the avoidance of doubt, this section means Plaintiff and Plaintiff's Counsel agree not to issue press
6 releases, communicate with, or respond to any media or publication entities, publish information in
7 manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by
8 print, video, recording or any other medium, with any person or entity concerning the Settlement,
9 including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement,
10 except as shall be contractually required to effectuate the terms of the Settlement. Class Counsel will
11 take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the
12 restriction against any publicity regarding the Settlement and against any media comment on the
13 Settlement and its terms as described in this paragraph. Class Counsel further agrees not to use the
14 Settlement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict
15 Class Counsel from including publicly available information regarding the Actions and/or the
16 Settlement in future judicial submissions regarding Class Counsel's qualifications and experience.
17 Furthermore, Plaintiff and Class Counsel will undertake any and all disclosures and submissions
18 required to be made to the LWDA in conformity with PAGA.

19 39. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
20 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements
21 may be deemed binding on the Parties. The Parties expressly recognize California Civil Code § 1625
22 and California Code of Civil Procedure § 1856(a), which provide that a written agreement is to be
23 construed according to its terms and may not be varied or contradicted by extrinsic evidence, and the
24 Parties agree that no such extrinsic oral or written representations or terms will modify, vary, or
25 contradict the terms of this Settlement Agreement. This Settlement Agreement contains the entire
26 agreement between the Parties relating to the settlement and transaction contemplated hereby, and all
27 prior or contemporaneous agreements, understandings, representations, and statements, whether oral or
28 written and whether by a Party or such Party's legal counsel, are merged herein.

1 40. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in the
2 Action (including, and not limited to, the deadline to bring the Action to trial under California Code of
3 Civil Procedure section 583.310), except such proceedings necessary to implement and complete the
4 Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

5 41. Waiver and Amendment. Parties may amend or modify any provision of this Settlement
6 Agreement by way of written instrument signed by counsel for all of the Parties, subject to Court
7 approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a
8 waiver of any other provision.

9 42. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
10 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
11 Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant
12 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
13 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
14 full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement
15 will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
16 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
17 provisions that otherwise might apply under state or federal law.

18 43. Signatories. It is agreed that because the members of the Class are so numerous, it is
19 impossible or impractical to have each Settlement Class Member or PAGA Aggrieved Employee execute
20 this Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of
21 the Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement
22 as to the PAGA Aggrieved Employees, and the release shall have the same force and effect as if this
23 Settlement Agreement were executed by each Settlement Class Member and PAGA Aggrieved
24 Employee.

25 44. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
26 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

27 45. California Law Governs. All terms of this Settlement Agreement and attached exhibits
28 hereto will be governed by and interpreted according to the laws of the State of California.

1 46. Execution and Counterparts. This Settlement Agreement is subject only to the execution
2 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
3 executed counterparts and each of them, including facsimile, electronic, and scanned copies of the
4 signature page, will be deemed to be one and the same instrument.

5 47. Acknowledgment that the Settlement is Fair and Reasonable. The Parties believe this
6 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action, Released Class
7 Claims, and Released PAGA Claims, and have arrived at this Settlement after arm's-length negotiations
8 and in the context of adversarial litigation, taking into account all relevant factors, present and potential.
9 The Parties further acknowledge that they are each represented by competent counsel and that they have
10 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this
11 Settlement Agreement. In addition, if necessary to obtain approval of the Settlement, the Mediator may
12 execute a declaration supporting the Settlement and the reasonableness of the Settlement and the Court
13 may, in its discretion, contact the Mediator to discuss the Settlement and whether or not the Settlement
14 is objectively fair and reasonable.

15 48. Invalidity of Any Provision. Before declaring any provision of this Settlement
16 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
17 possible consistent with applicable precedents so as to find all provisions of this Settlement Agreement
18 valid and enforceable.

19 49. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by
20 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate to
21 implement the Settlement.

22 50. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve
23 the dispute that has arisen between them and to avoid the burden, expense and risk of continued
24 litigation. In entering into this Settlement Agreement, Defendant does not admit, and specifically denies,
25 that it has violated any state, federal, or local law; violated any regulations or guidelines promulgated
26 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
27 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in
28 any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any

of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with state, federal, local or other applicable law.

51. Captions. The captions and paragraph numbers in this Settlement Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Settlement Agreement.

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

53. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

54. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement herein will be subject to final Court approval.

55. Notices. All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by overnight mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

To Plaintiff and Class Counsel:

Arby Aiwarzian
Joanna Ghosh
Vartan Madoyan
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203

To Defendant:

Spencer Skeen
Jesse Ferrantella
Keenan O'Connor
**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**
4660 La Jolla Village Dr., Suite 900

56. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days. This will satisfy California Rules of Court 3.771(b), and no individualized notice of the Final Approval Order and Judgment to the Class will be required.

57. Cooperation and Execution of Necessary Documents. All Parties and their counsel will cooperate with each other in good faith and use their best efforts to implement the Settlement, including and not limited to, executing all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Mediator and then the Court to resolve such disagreement.

58. No Unalleged Claims. Plaintiff and Class Counsel represent that they, as of the date of execution of this Settlement, are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the Operative Complaint in the Action. Plaintiff and Class Counsel further represent that, other than the Action, they have no current intention of asserting any other claims against Defendant in any judicial or administrative forum; they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant in any future-initiated proceeding. The Parties acknowledge, understand, and agree that the representations described in this paragraph are essential to the Agreement and that this Agreement would not have been entered into were it not for these representations.

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IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and PAGA Settlement and Release between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF JESSE JOERGER

Dated: 09/29/2023, 2023

Electronically Signed: 2023-09-29 16:32:22 UTC - 174.218.18.85

Jesse Joerger

Nintex AssureSign®: d42eb840-64b5-4170-92b5-b08b01499ed1

Jesse Joerger, Plaintiff

DEFENDANT IES RESIDENTIAL INC.

Dated: _____, 2023

Full Name: _____

Title: _____

On behalf of IES Residential Inc.

APPROVED AS TO FORM

LAWYERS *for* JUSTICE, PC

Dated: September 29, 2023

Karen S. McFarlane

Arby Aiwarzian

Joanna Ghosh

Vartan Madoyan

Attorneys for Plaintiff Jesse Joerger and Proposed Class Counsel

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

Dated: _____, 2023

Spencer Skeen

Jesse Ferrantella

Keenan O'Connor

Attorneys for Defendant IES Residential Inc.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Class and PAGA Settlement and Release between Plaintiff and Defendant:

IT IS SO AGREED.

PLAINTIFF JESSE JOERGER

Dated: _____, 2023

Jesse Joerger, Plaintiff

DEFENDANT IES RESIDENTIAL INC.

Dated: September 29, 2023

Full Name: Mary Newman

Title: Vice President + Secretary
On behalf of IES Residential Inc.

APPROVED AS TO FORM

LAWYERS *for* JUSTICE, PC

Dated: _____, 2023

Arby Aiwazian
Joanna Ghosh
Vartan Madoyan
*Attorneys for Plaintiff Jesse Joerger and Proposed Class
Counsel*

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

Dated: September 29, 2023

Spencer Skeen
Jesse Ferrantella
Keenan O'Connor
Attorneys for Defendant IES Residential Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Jesse Joerger v. IES Residential, Inc.
Superior Court of California for the County of Riverside, Case No. CVRI2205490

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendant's records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Jesse Joerger (“Plaintiff”) and Defendant IES Residential, Inc. (“Defendant”) (Plaintiff and Defendant are collectively referred to as the “Parties”), in the case entitled *Jesse Joerger v. IES Residential, Inc.*, Riverside County Superior Court, Case No. CVRI2205490 (the “Action”), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] (the “Final Approval Hearing”) to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

“**Class**” means all current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California at any time during the period Class Period.

“**Class Member**” means a member of the Class.

“**Class Period**” means the time period from October 6, 2018 through [date of Preliminary Approval].

“**Class Settlement**” means the settlement and resolution of all Released Class Claims (described in Section III.D below).

“**PAGA Aggrieved Employees**” means all current and former hourly-paid or non-exempt employees who were employed by Defendant within the State of California at any time during the PAGA Period.

“**PAGA Period**” means the time period from October 11, 2021 through [date of Preliminary Approval].

“**PAGA Settlement**” means the settlement and resolution of Released PAGA Claims (described in Section III.D below).

II. BACKGROUND OF THE LAWSUIT

On December 16, 2022, Plaintiff commenced a class action lawsuit by filing the Class Action Complaint for Damages in the Action. On June 27, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor Code that Plaintiff contends were violated (“PAGA Notice”) in connection with the Private Attorneys General Act (“PAGA”), Labor Code Section 2698-2699.8. PAGA authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for California Labor Code violations.

On [filing date of amended complaint], Plaintiff filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act (“Operative Complaint”). Plaintiff alleges that Defendant failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and related premium wages, timely pay wages during employment and pay related waiting-time penalties, timely pay wages during employment, provide compliant wage statements, maintain required payroll records, reimburse necessary business expenses, and comply with unfair competition laws under California Business & Professions Code, and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid minimum and overtime wages, unpaid wages and meal and rest

period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendant denies all of the allegations in the Action and denies that it violated any relevant law with respect to the Class.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement," "Settlement," or "Settlement Agreement").

On [date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Phoenix Settlement Administrators as the administrator of the Settlement ("Settlement Administrator"), Plaintiff Jesse Joerger as representative of the Class ("Class Representative"), and the following Plaintiff's attorneys as counsel for the Class ("Class Counsel"):

Arby Aiwarzian
Joanna Ghosh
Vartan S. Madoyan
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

If you are a Class Member, you do not need to take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Aggrieved Employee, you do not need to take any action to receive an Individual PAGA Payment.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff, Class Members, or PAGA Aggrieved Employees. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of Class Members and PAGA Aggrieved Employees. The Court has made no ruling on the merits of the claims asserted in the Action and has determined only that certification of the Class for settlement purposes may be appropriate under California law. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total Gross Settlement Amount is Five Hundred Forty-Seven Thousand Dollars (\$547,000) (the "Gross Settlement Amount"). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the "Net Settlement Amount." The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys' fees, in an amount not to exceed 35% of the Gross Settlement Amount (i.e., \$191,450) and reimbursement of litigation costs and expenses in an amount not to exceed Fifteen Thousand Dollars (\$15,000) (collectively, "Attorneys' Fees and Costs") to Class Counsel; (2) Enhancement Award in an amount not to exceed Nine Thousand Dollars (\$9,000) to Plaintiff for his services in the Action; (3) the amount of Seventy-Five Thousand Dollars (\$75,000) allocated toward civil penalties under PAGA ("PAGA Amount"); and (4) Settlement Administration Costs in an amount not to exceed Seven Thousand Five Hundred Dollars (\$7,500) to the Settlement Administrator. By law, the PAGA Amount will be distributed 75% to the LWDA (i.e., \$56,250) ("LWDA Payment") and the remaining 25% (i.e., \$18,750) will be distributed to PAGA Aggrieved Employees ("PAGA Aggrieved Employee Amount").

Class Members are eligible to receive payment under the Class Settlement of their proportional share of the Net Settlement Amount ("Individual Settlement Share") based on the number of weeks each Class Member was employed by Defendant as an hourly-paid or non-exempt employee in California during the Class Period ("Workweeks"), divided by the total

number of weeks that all Class Members collectively were employed during the Class Period.

The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to calculate the “Estimated Workweek Value,” and multiplied each Class Member’s individual Workweeks by the Estimated Workweek Value to calculate his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement (which is listed in Section III.C below).

The estimated average Individual Settlement Share is approximately: \$[estimated average Individual Settlement Share]
The estimated highest Individual Settlement Share is approximately: \$[estimated average Individual Settlement Share]
The estimated lowest Individual Settlement Share is approximately: \$[estimated average Individual Settlement Share]

Each Individual Settlement Share will be allocated as twenty percent (20%) wages, which will be reported on an IRS Form W-2, and eighty percent (80%) interest, penalties, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Share (the net payment is referred to as “Individual Settlement Payment”). Conversely, the employer’s share of taxes and contributions in connection with the wages portion of the Individual Settlement Shares (“Employer Taxes”) shall be paid by Defendant separately and in addition to the Gross Settlement Amount.

PAGA Aggrieved Employees are eligible to receive payment under the PAGA Settlement of their proportional share of the PAGA Aggrieved Employee Amount (“Individual PAGA Payment”) based on the number of weeks each PAGA Aggrieved Employee was employed by Defendant as an hourly-paid or non-exempt employee in California during the PAGA Period, (“PAGA Workweeks”), divided by the total number of weeks that all PAGA Aggrieved Employees collectively were employed during the PAGA Period.

The Settlement Administrator has divided the PAGA Aggrieved Employee Amount, i.e., 25% of the PAGA Amount, by the total number of Workweeks of all PAGA Aggrieved Employees during the PAGA Period to calculate the “PAGA Workweek Value,” and multiplied each PAGA Aggrieved Employee’s individual Workweeks during the PAGA Period by the PAGA Workweek Value to calculate his or her Individual PAGA Payment (which is listed in Section III.C below).

The estimated average Individual PAGA Payment is approximately: \$[estimated average Individual PAGA Payment]
The estimated highest Individual PAGA Payment is approximately: \$[estimated average Individual PAGA Payment]
The estimated lowest Individual PAGA Payment is approximately: \$[estimated average Individual PAGA Payment]

Each Individual PAGA Payment will be allocated as 100% penalties, which will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Aggrieved Employees at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks Based on Defendant's Records

According to Defendant's records,

- **During the Class Period, you are credited as having [] Workweeks.**
- **During the PAGA Period, you are credited as having [] Workweeks.**

If you wish to dispute the above Workweeks credited to you, you must submit a written letter (“Workweeks Dispute”), which must: (a) contain the case name and number of the Action (*Jesse Joerger v. IES Residential, Inc.*, Case No. CVRI2205490); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security Number; (c) clearly state that you dispute the number of Workweeks credited to you and what you contend is the correct number which should be credited to you; (d) attach any documentation that you may have to support the dispute;

and (e) be submitted by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked on or before [Response Deadline].

C. Your Estimated Individual Settlement Share and Individual PAGA Payment

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [redacted].

The Individual Settlement Share is subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [redacted].

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Notice is only an estimate. Your actual Individual Settlement Share and Individual PAGA Payment (if applicable) may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement, and after the Settlement goes into effect.

D. Release of Claims

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims whether known or unknown.

Upon the Effective Date and full funding of the Gross Settlement Amount, Plaintiff and the State of California will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims whether known or unknown. Plaintiff does not release any PAGA Aggrieved Employee's claim for wages or damages. However, PAGA Aggrieved Employees who are also Settlement Class Members will also be deemed to have fully, finally and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims whether known or unknown.

"Released Class Claims" means all claims, causes of action, and theories of relief that were alleged in the Operative Complaint or that reasonably could have been alleged based on the facts contained in the Operative Complaint, and all damages, penalties, interest, and other amounts recoverable for said claims, causes of action, and legal theories, arising during the Class Period, including all of the following: failure to pay all regular wages, minimum wages, and overtime wages due; failure to properly calculate the regular rate of pay for payment of overtime wages; failure to provide proper meal periods and properly provide meal period premium pay; failure to provide proper rest periods and properly provide rest period premium pay; failure to pay all wages timely during employment; failure to pay all wages timely at the time of termination; failure to provide complete, accurate, or properly formatted wage statements; failure to keep required payroll records; failure to reimburse business expenses; and unfair business practices that could have been premised on the claims, causes of action, or legal theories of relief described above, or any of the claims, causes of action, or legal theories of relief pleaded in the Operative Complaint.

"Released PAGA Claims" means all claims for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Section 2698-2699.8, which arose during the PAGA Period and could have been sought by the California Labor Commissioner premised on the violations of law identified in Plaintiff's June 27, 2023 letter to the LWDA, the enclosures to such June 27, 2023 letter, and any supplemental correspondence to the LWDA, and only to the extent they are alleged in the Operative Complaint.

"Released Parties" means Defendant and its current and former officers, directors, employees, and agents.

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$191,450) and reimbursement of litigation costs and expenses in an amount not to exceed Fifteen Thousand Dollars (\$15,000) (collectively, "Attorneys' Fees and Costs"), subject to approval by the Court. The Attorneys' Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on

behalf of Plaintiff, Class Members, and PAGA Aggrieved Employees on a contingency fee basis (i.e., without being paid any money to date) and has been paying all litigation costs and expenses to date.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of up to Nine Thousand Dollars (\$9,000) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, will be paid to Plaintiff in addition to any Individual Settlement Payment and Individual PAGA Payment that he is entitled to under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Seven Thousand Five Hundred Dollars (\$7,500) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Objections, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement. The Settlement Administration Costs shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Settlement and receive money from the Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based on the Class Settlement, and you will release the Released Class Claims described in Section III.D above.

If you are a PAGA Aggrieved Employee, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based on the PAGA Settlement, and you will release the Released PAGA Claims described in Section III.D above.

Class Members and PAGA Aggrieved Employees will not be separately responsible for payment of attorney’s fees or litigation costs and expenses, unless they retain their own counsel in which event they are responsible for their own fees and expenses.

B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a written letter indicating a request to be excluded from the Class Settlement, as described below, or by completing and submitting the enclosed Exclusion Form (both of which are referred to as a “Request for Exclusion”) to the Settlement Administrator.

A Request for Exclusion must: (a) contain the case name and number of the Action (*Jesse Joerger v. IES Residential, Inc.*, Case No. CVRI2205490); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security Number; (c) contain a clear written statement indicating that you seek exclusion from the Class Settlement; and (d) be submitted by mail to the Settlement Administrator at the specified address below, postmarked on or before **[Response Deadline]**.

[Settlement Administrator]

[Mailing Address]

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be entitled to receive an Individual Settlement Payment, will not be bound by the Class Settlement or the release of Released Class Claims described in Section III.D above, and will not have any right to object to, appeal, or comment on the

Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court. PAGA Aggrieved Employees will be bound to the PAGA Settlement and the release of Released PAGA Claims described in Section III.D above, and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion. PAGA Aggrieved Employees may not submit a Request for Exclusion as to the PAGA Settlement.

C. Object to the Class Settlement

Class Members may object to the Class Settlement as long as they have not submitted a Request for Exclusion (i.e., as long as they are Settlement Class Members), by submitting a written objection to the Settlement Administrator, as described below, or by completing and submitting the enclosed Objection Form (both of which are referred to as an “Objection”) to the Settlement Administrator, or by presenting their objection orally at the Final Approval Hearing.

An Objection must: (a) contain the case name and number of the Action (*Jesse Joerger v. IES Residential, Inc.*, Case No. CVRI2205490); (b) contain the your full name, signature, address, telephone number, and last four (4) digits of your Social Security Number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents, if any, upon which the objection is based; and (e) be submitted by mail to the Settlement Administrator at the specified address listed in section IV.B. above, postmarked on or before **[Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 1 of the Riverside County Superior Court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will be asked to approve the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs.

The hearing may be continued without further notice to Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to. Personal appearances and telephonic appearances are an option.

Please visit the Court’s website for the most up-to-date information regarding the impact of COVID-19 on the operations of the Court and any requirements that may apply for accessing Court facilities:

<https://www.riverside.courts.ca.gov/PublicNotices/COVID-19-Court-Operations.php>

On the Court’s website, you can find information regarding appearing remotely via Zoom online (for the Final Approval Hearing that is scheduled to be held in Department 1 of the Historic Courthouse of the Riverside County Superior Court):

<https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>.

VI. ADDITIONAL INFORMATION

The above summarizes the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed Joint Stipulation of Class Action and PAGA Settlement and Release, which is attached as Exhibit **[#]** to the Declaration of Joanna Ghosh in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement filed on **[MPA filing date]** and other papers which are on file with the Records Management Division of the Riverside County Superior Court, located at the Riverside Historic Courthouse, 4050 Main Street, Riverside, CA 92501. Some documents and information regarding the Action can also be accessed online for a fee or at a minimal charge at the Riverside County Superior Court’s website (<https://epublic-access.riverside.courts.ca.gov/public-portal/>). To look up and access documents and information on the Court’s systems, you will need to use the case number for the Action (Case No. CVRI2205490).

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

EXHIBIT B

Superior Court of California, County of Riverside, Case No. CVRI2205490

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE CLASS SETTLEMENT.

[Phoenix Settlement Administrators]
[INSERT MAILING ADDRESS]

[illegible]

Date: _____

Full Name: _____

Address: _____

Telephone Number: (____ _ ____) ____ _ ____ _ ____ _ ____ _

Signature: _____

To ensure that this form is properly processed on your behalf and to avoid confusion in the event that multiple individuals having the same or similar names submit this form, please provide the last 4 digits of your Social Security Number to the administrator so that your identity may be confirmed:

____ _ ____ _

If you do not wish to object to the Class Settlement, you should not return this form – you do not need to take any action. If the proposed settlement receives final approval from the Court, the Settlement Administrator will send you a check by U.S. Mail, at the last address the Settlement Administrator has on file for you.

EXHIBIT C

EXCLUSION FORM

USE AND RETURN THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT.

If you wish to exclude yourself from the Class Settlement, you must read and sign the following statement and return this form to the Settlement Administrator, by mail, postmarked on or before **[RESPONSE DEADLINE]**, at the following mailing address:

**[Phoenix Settlement Administrators]
[INSERT MAILING ADDRESS]**

I request to be excluded from the class action settlement in the matter of *Jesse Joerger v. IES Residential, Inc.* By excluding myself from the class action settlement, I understand that I will not be bound by the settlement and release of the Class Released Claims, and that I will not receive an Individual Settlement Payment. I understand that, nevertheless, if I am a PAGA Aggrieved Employee, I will still be bound by the settlement and release of the PAGA Released Claims and will be issued an Individual PAGA Payment.

Date: _____

Full Name: _____

Address: _____

Telephone Number: (____ ____ ____) ____ ____ ____ ____ ____

Signature: _____

To ensure that this form is properly processed on your behalf and to avoid confusion in the event that multiple individuals having the same or similar names submit this form, please provide the last 4 digits of your Social Security Number to the administrator so that your identity may be confirmed:

If you do not wish to exclude yourself from the Class Settlement (and you wish to receive a payment from the Class Settlement), you should not return this form – you do not need to take any action.