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9 Attorneys for Plaintiff MELVIN STAKELY, JR.,
10 on behalf of himself and others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13

14 MELVIN STAKELY, JR., an individual on
behalf of himself and all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 WINDSOR PALMS CARE CENTER OF
ARTESIA, a business entity of unknown
19 form; WINDSOR TWIN PALMS
HEALTHCARE CENTER, LLC, a
20 California limited liability company;
MODERN HERO, INC., a California
21 corporation, and DOES 1 through 50,
inclusive,

22 Defendants.
23
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25

Case No.: 21STCV10507

CLASS ACTION

Assigned for All Purposes To:
Hon. Carolyn B. Kuhl
Dept.: 12

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points
and Authorities; Declaration of Walter Haines;
and [Proposed] Order]*

Date: December 13, 2021
Time: 9:30 a.m.
Dept: 12

1 5. I have been practicing law since 2003. Since 2007, I have focused almost exclusively
2 on representing employees, including in wage-and-hour class actions. During my career I have
3 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel
4 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
5 obtained six and seven figure settlements against a range of defendants, including Fortune 500
6 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
7 failure to pay minimum wages, unpaid wages and overtime, failure to provide meal breaks,
8 inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in the
9 present matter.

10 6. I am experienced in prosecuting employment matters, particularly class actions. In
11 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
12 class-action lawsuits pending in various state and federal jurisdictions throughout California.

13 7. My extensive experience in litigating employment wage and hour matters has been
14 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
15 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
16 wage and hour litigation requires skill and knowledge concerning the constantly evolving
17 substantive law (state and federal), as well as the procedural law of class action litigation. In this
18 action, I am fully equipped to use the skills and knowledge I have developed through more than a
19 decade of prosecuting and defending wage and hour class actions to fairly and adequately
20 represent the interests of the Class. Therefore, on the account of my resources, experience, and
21 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative
22 Class Members in this action.

23 8. In the last several years I have had several contested class cases certified. When
24 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the
25 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
26 over 100 class action settlements, including many involving the same issues presented in this
27 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*
28 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);

1 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead
2 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
3 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;
4 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
5 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx.
6 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead
7 counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600;
8 lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx.
9 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
10 counsel); *Utlely v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
11 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
12 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
13 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
14 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
15 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
16 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
17 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479;
18 class size approx 60; lead counsel).

19 9. For purposes of this motion, the “Class” or “Class Members” consist of “all current and
20 former non-exempt employees who worked for Defendants in California at any time from March
21 17, 2017 to the date of Preliminary Approval or such earlier date as Defendants may hereafter
22 designate pursuant to paragraph 60(b) of the Settlement Agreement.” I do not believe that I have
23 any conflicts of interest with the Class or with the Class Representative. I am not related to the
24 Class Representative. I have not previously represented Defendants in any matter. I respectfully
25 submit that I, and David Yeremian & Associates, Inc. are well suited to act as Class Counsel in
26 this action, and we have and will continue to vigorously represent the interests of the Class
27 Members.

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1 and claims giving rise to the action, including: (1) conducting informal and formal discovery, and
2 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and
3 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
4 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
5 damage models based on interpretations of California law; and (5) reviewing information
6 provided by Defendants at the mediation. The Class enumerated in this action is ascertainable
7 because the Class Members may be readily identified by reference to Defendants' records.
8 Defendants have agreed to share the information from these records with the Settlement
9 Administrator in order to identify and contact the Class Members. I understand there are
10 approximately 690 total Class Members.

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

16 15. On October 7, 2021, the parties mediated this case with Lisa Klerman, Esq., a
17 respected and highly experienced mediator in wage and hour class actions. During mediation,
18 Plaintiff and Defendants' counsel discussed all aspects of the case, including the risks of litigation
19 and the risks to both parties of proceeding with a motion for class certification as well as the law
20 relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. As a result of
21 the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the
22 Settlement Agreement. From Class Counsel's review of the facts, strengths, and weaknesses of
23 the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation
24 experience, Class Counsel believes that the recovery for each class member is fair and reasonable
25 taking into consideration the amounts received in other wage and hour class actions, the risks
26 inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to
27 the settlement award he or she will receive. Further, and based on the settlement negotiations,
28 which were extensive and conducted in good faith and at arm's length between attorneys with

1 substantial experience litigating class actions and wage and hour cases, the Settlement Agreement
2 was the product of a non-collusive settlement process in which the parties were forced to make
3 significant compromises in the interest of reaching a full and complete settlement of the lawsuit.

4 **SUMMARY OF SETTLEMENT**

5 16. The parties have executed a Joint Stipulation of Class Action Settlement (“Settlement
6 Agreement” or “Settlement”) attached hereto and incorporated herein as **Exhibit 1**. Defendants
7 have agreed to pay Three Hundred Sixty Five Thousand and Zero Cents (\$365,000.00) (“Gross
8 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
9 Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Exh. 1, §13)

10 17. The Settlement Agreement defines the “Class” or “Class Members” as “all current and
11 former non-exempt employees who worked for Defendants in California at any time between
12 March 17, 2017 to the date of Preliminary Approval or such earlier date as Defendants may
13 hereafter designate pursuant to paragraph 60(b) of the Settlement Agreement” (Exh. 1, §6)
14 However, it does not include any person who submits a timely and valid request for exclusion.
15 (Exh. 1, §6) “Class Period” means the period from March 17, 2017 to the date of Preliminary
16 Approval or such earlier date as Defendants may hereafter designate pursuant to paragraph 60(b)
17 of the Settlement Agreement. (Exh. 1, §7)

18 18. The “Net Settlement Amount” shall be the Gross Settlement Amount, less the
19 Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, Settlement
20 Administration Costs, and seventy-five percent (75%) of the LWDA Payment. (Exh. 1, §14)
21 These amounts are detailed as follows:

- 22 • not more than One Hundred Twenty One Thousand Six Hundred Sixty Six Dollars
23 and Sixty Seven Cents (\$121,666.67) to Class Counsel for attorneys’ fees, and not
24 more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) to Class
25 Counsel for litigation costs; (Exh. 1, §33);
- 26 • not more than Eleven Thousand Five Hundred Dollars and Zero Cents (\$11,500)
27 for the Settlement Administration Costs; (Exh. 1, §35);
- 28 • not more than Five Thousand Dollars and Zero Cents (\$5,000.00) for a Class

Representative Enhancement Payment; and (Exh. 1, §34);

- Ten Thousand Dollars and Zero Cents (\$10,000.00) for civil penalties under the PAGA, where 75% (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) will be included in the Net Settlement Amount and distributed to Settlement Class Members). (Exh. 1, §36)

19. The “Individual Settlement Payment,” which is each Class Member’s share of the Net Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on the number of workweeks a Class Member worked during the Class Period as a non-exempt employee in California. (Exh. 1, §37)

20. Defendants’ corporate payroll tax obligations shall be paid in addition to the Gross Settlement Amount, and none of the Gross Settlement Amount will revert to Defendants. (Exh. 1, §13)

21. The settlement amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. However, taking into account all of the circumstances of the action and the defenses raised by Defendants against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable.

22. Class Members shall each receive a Notice of Class Action Settlement, Opt-out Form, and Objection Form (“Notice Packet”) via regular First Class U.S. Mail, using the most current, known mailing addresses identified in the Class List. (Exh. 1, §41) Before mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (Exh. 1, §42) If the Notice Packet is returned as non-deliverable on or before the Response Deadline and a new address is obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly forward the original Notice Packet to the updated address via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Exh. 1, §42). The Notice will be in English and will also be translated in Spanish.

23. Class Members will have an opportunity to dispute the information provided in their Notice Packet and they must timely produce evidence to support the information is inaccurate.

1 (Exh. 1, §44) The Settlement Administrator shall decide the dispute and may ask Defendants to
2 produce the personnel and payroll files of the Class Member disputing their credited workweeks
3 in order to resolve the dispute. (Exh. 1, §44)

4 24. Class Members wishing to opt-out from the Settlement Agreement must sign and
5 postmark a written Request for Exclusion to the Settlement Administrator within the “Notice
6 Period.” (Exh. 1, §45). The Exclusion Deadline will be forty five (45) calendar days after the date
7 the Notice Packet was mailed. (*Id.*) The delivery date is deemed to be the date the Opt-Out
8 request is deposited in the U.S. Mail as evidenced by the postmark. (*Id.*)

9 25. Class Members will also have the opportunity to object to the Settlement Agreement,
10 by serving a copy of the objection to the Settlement Administrator. (Exh. 1, §48) All objections
11 must be served within forty five (45) calendar days of first mailing of the Notice Packet. (*Id.*)
12 Class Members who do not serve written objections may not object to the settlement by way of
13 appeal. (*Id.*)

14 **THE STRENGTH OF PLAINTIFF’ CASE**
15 **IN LIGHT OF THE SETTLEMENT AMOUNT**

16 26. Because the class consists of numerous employees, it was unlikely that the potential
17 monetary claims of individual Class Members would have proved viable without the class-action
18 mechanism. The Settlement Agreement should be approved in light of two California appellate
19 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
20 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

21 27. The strength of the Plaintiff’s case in light of the settlement amount is deemed by
22 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
23 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay
24 minimum wages and overtime, failed to provide proper meal breaks or provide premium pay in
25 lieu thereof, failed to provide proper rest breaks or provide premium pay in lieu thereof, failed to
26 provide accurate wage statements, failed to timely pay all wages including upon termination, and
27 failed to maintain accurate records all in violation of California law. Plaintiff seek related
28 violations of California’s Business & Professions Code, and penalties pursuant to Labor Code §

1 2699 *et seq.* Plaintiff conducted discovery and investigated each of the claims they alleged.
2 Specifically, Defendants produced the following: (a) all versions of Defendants' employee
3 handbook in effect during the Class Period; (b) all versions of Defendants' policies and
4 procedures pertaining to minimum wages, overtime, meal breaks, and rest breaks, which were in
5 effect during the Class Period; (c) Plaintiff's personnel files; (d) Plaintiff's timekeeping and
6 payroll records; (e) the timekeeping and payroll records; and (f) information on the class
7 demographics including the total number of Class Members during the Class Period, total number
8 of Class Members during the PAGA Period, total number of current employees, total number of
9 former employees in the relevant time period, average hourly rate of pay, total number of
10 workweeks worked during the Class Period, and the total number of paychecks issued during the
11 relevant time period. The merits of each of these claims will be addressed separately below.

12 28. Based on the data provided, Plaintiff believes that the maximum award the class could
13 have obtained is approximately \$4.8 million. Class Counsel estimated the following maximum
14 exposures: unpaid wage claim at \$434,223, meal period claim at \$375,600, rest period claim at
15 \$375,600, wage statement claim at \$806,850, waiting time penalties at \$2,030,944, and on
16 PAGA, Plaintiff estimated the maximum exposure at \$820,000.

17 29. However, taking into account the difficulties of proof, the Defendants' defenses, and
18 other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or
19 other relief that the class could reasonably expect to be awarded at trial is significantly less than
20 the maximum exposure.

21 30. Plaintiff believes they would be awarded approximately \$1.1 million at trial. Class
22 Counsel estimates they would recover the following amount in damages at trial: unpaid wage
23 claim at \$217,111, meal period claim at \$187,800, rest period claim at \$0, wage statement claim
24 at \$201,712, waiting time penalties at \$507,736, and on PAGA, Plaintiff estimate they would
25 recover anywhere from \$10,000-15,000.

26 **Minimum Wages and Overtime**

27 31. Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members minimum
28 wages for all hours worked, in violation of minimum wage laws. Plaintiff contended that Class

1 Members were not paid all wages they were owed including for all worked performed and for all
2 overtime hours worked. Specifically, Plaintiff alleged Defendants required Class Members to
3 clock out for their meal break but to continue working. Additionally, Plaintiff contended
4 Defendants required Class Members to perform pre-shift and post-shift off the clock work. At the
5 beginning of Class Members' shift, they were required to stand in line to get to the lobby, have
6 their temperature taken and wash their hands, walk over to get personal protective equipment
7 such as masks and face shields, put on the personal protective equipment, and stand in another
8 line to finally clock into the timekeeping system. Similarly, at the end of their shift, Class
9 Members were required to clock out of the timekeeping system and then take off their uniform
10 and/or personal protective equipment.

11 32. Defendants contended that they paid for all reported hours worked, that Class Members
12 were trained to record all hours worked, and that they paid proper minimum wages. Defendants
13 also maintained that the allegations regarding failure to pay wages for hours worked in excess of
14 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendants
15 argued that given their written policies and practices, any unrecorded hours were likely subject to
16 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
17 Class Counsel had to apply a significant discount to damages based on this theory.

18 33. Based on the above detailed facts, Class Counsel estimated Defendants' exposure on
19 unpaid wages claims to be approximately \$434,223 (Plaintiff's expert calculated 5 minutes of
20 unpaid wages due to off the clock work. Class Counsel estimates they would be awarded
21 \$217,111 for 2.5 minutes off the clock work per shift.

22 **Meal Periods and Rest Breaks**

23 34. Plaintiff alleged that Defendants consistently failed to provide timely and uninterrupted
24 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th
25 1004, 1040 ("[T]he wage order's meal period requirement is satisfied if the employee (1) has at
26 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
27 the entire period.").

28 35. Plaintiff argued that Defendants had a common practice and policy of denying

1 compliant meal periods and that Defendants' meal policies were facially defective. Specifically,
2 Plaintiff and Class Members were regularly required to work through their meal periods, never
3 being provided the opportunity to take uninterrupted thirty (30) minute meal periods in
4 accordance with California law. Moreover, what meal periods Class Members did receive were
5 provided well after their fifth consecutive hour of work. This practice of providing untimely and
6 late meal periods comports with Defendants' defective meal period policy (requiring Class
7 Members to take their meal periods after their fifth hour of work) uniformly applicable to all
8 Class Members. For each meal period missed, of less than 30 minutes, or taken late for which the
9 employee was not provided a reasonable opportunity to take a complete and timely meal period,
10 an employer must pay the employee an additional one hour of compensation. Labor Code §
11 226.7. This additional hour of compensation is referred to as "premium pay." To comply with
12 these laws, every employer must keep, for each employee, accurate time records showing when
13 the employee begins and ends each work period and takes his or her meal periods. *See Wage*
14 *Order 1-2001(7)(A)(3).*

15 36. Defendants disagreed with Class Counsel's interpretation of the law and facts.
16 Defendants contended that Class Members were given a reasonable opportunity to take their meal
17 periods, and in fact received their meal periods most of the time. Defendants argued they have a
18 high meal period compliance rate.

19 37. Class Counsel estimated Defendants' maximum total exposure on the meal break claim
20 at approximately \$375,600 (40,000 workweeks x .5 (1 meal break violation for 2 every weeks) x
21 \$18.78 average hourly pay). Class Counsel estimates they would be awarded \$187,800 for the
22 meal break claim. Class Counsel applied a 50% discount on the meal break claim due to the fact
23 that Defendants' meal break policy was valid and many individualized issues would apply making
24 certification of this claim difficult to achieve.

25 38. The same argument applied to rest breaks. Plaintiff contended that Defendants did not
26 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
27 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were
28 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which

1 they were denied. Class Members were required to work through their rest breaks, and through
2 their entire shifts.

3 39. Defendants maintained that they did provide the reasonable opportunity for Class
4 Members to take duty-free rest breaks. Defendants also pointed out that, unlike meal periods, rest
5 breaks need not be recorded and Defendants dispute all allegations that breaks were not received.
6 As these considerations would likely depress the damages *vel non* ultimately awarded, Class
7 Counsel applied significant and appropriate discounts to the rest-break claim.

8 40. Class Counsel estimated Defendants' maximum total exposure on the rest break claim
9 at approximately \$375,600 (40,000 workweeks x .5 (1 rest break violation for every 2 weeks) x
10 \$18.78 average hourly pay. Class Counsel estimates they would be awarded \$0 for the rest break
11 claim due to the fact that Defendants' rest break policy was valid, rest breaks need not be
12 recorded and can be waived by the employees, and many individualized issues would apply
13 making certification of this claim difficult to achieve.

14 **Paystub Violations**

15 41. Plaintiff also contended that Defendants failed to provide Class Members with
16 accurate, itemized wage statements in writing as required by California Labor Code § 226(a)
17 because the wage statements failed to accurately account for unpaid wages and overtime due to
18 unlawful rounding and underreporting of hours and off the clock work. Moreover, Plaintiff
19 contended the wage statements failed to accurately account for premium pay for deficiently
20 provided meal and rest breaks which Defendants knew or reasonably should have known were
21 owed to Plaintiff and Class Members. As a direct and proximate cause of Defendants' violation of
22 Labor Code § 226(a), the Class Members suffered injuries, including among other things
23 confusion over whether they received all wages owed them. Pursuant to Labor Code §§ 226(a)
24 and 226(e), employees are entitled to recover the greater of all actual damages or fifty dollars
25 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for
26 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
27 dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

28 42. Defendants contended that Plaintiff's claim for further Labor Code § 226(e) penalties

1 would depend in large part on their underlying meal and rest period and wage claims, and thus be
2 subject to the same defenses. Additionally, Defendants argued this claim has little or no value.
3 *See e.g., Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019), *rev. granted*
4 *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, 2020 Cal. LEXIS 167 (Jan. 2, 2020)
5 ((noting, for example, that the remedy for a meal period/rest break violation is an extra hour of
6 pay, but that does not transform the remedy into a wage for triggering section 203 waiting time
7 penalties; similar analysis applied in rejecting a derivative claim for paystub penalties); *see also*
8 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements
9 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
10 determined that employer did not properly pay all wages due). Defendants further contended that
11 meal break violations, even if established, could not be the predicate for a Labor Code § 226
12 wage statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184,
13 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage
14 statement need only document compensation actually received and the hours used to calculate
15 that compensation). Defendants further contended that Labor Code § 226(e) penalties are not
16 automatic. Rather, the employee must show (1) that he or she “suffered injury” from the
17 employer’s failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work,*
18 *LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law) (holding employee was not
19 entitled to penalties because no injury was shown), and (2) Defendants’ noncompliance was
20 “knowing and intentional.” Finally, because the damages for this cause of action are penalties, the
21 statute of limitations only runs from one year prior to the filing of the original complaint. *See Cal.*
22 *Civ. Pro. § 340.*

23 43. Class Counsel estimated Defendants’ maximum total exposure on the section 226 claim
24 at approximately \$806,850 (\$50/\$100 x 8,200 number of paystubs from March 17, 2020 to
25 October 7, 2021; based on 263 employees). Class Counsel estimates they would be awarded
26 approximately \$201,712 for the wage statement penalties. Class Counsel applied a 75% discount
27 on the wage statement penalties due to the fact that Plaintiff would need to show that he suffered
28 an injury and that Defendants’ noncompliance was knowing and intentional. Additionally, Class

1 Counsel estimates it would be difficult to recover wage statement penalties given that it derives
2 from the unpaid wage and meal break claims which are both subject to many individualized
3 issues making certification of this claim difficult to achieve.

4 **Failure to Pay Final Wages**

5 44. In failing to pay the California Class Members their minimum wages, overtime wages,
6 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,
7 Defendants willfully failed to pay these the California Class Members all wages due and certain
8 at the time of termination or within seventy-two (72) hours of resignation, as required under
9 Labor Code § 203.

10 45. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
11 wages due at termination or within 72 hours of resignation, then that employee's wages shall
12 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
13 Because Class Members stopped working for Defendants but again were not paid their full
14 compensation for the reasons discussed above, Class Members did not receive all wages due upon
15 termination of employment.

16 46. Defendants argued that, under Labor Code § 203, employers are only obligated to pay
17 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
18 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

19 A willful failure to pay wages within the meaning of Labor Code Section 203
20 occurs when an employer intentionally fails to pay wages to an employee when
21 those wages are due. However, a good faith dispute that any wages are due will
preclude imposition of waiting time penalties under Section 203.

22 A "good faith dispute" that any wages are due occurs when an employer presents
23 a defense, based in law or fact, which, if successful, would preclude any recovery
24 on the part of the employee. The fact that a defense is ultimately unsuccessful will
25 not preclude a finding that a good faith dispute did exist. Defenses presented
which, under all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of a "good
faith dispute."

26 Defendants maintained that because they had viable defenses in both law and fact, especially in
27 light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case,
28 such penalties were subject to a three-year limitations period under Labor Code § 203(b).

1 Defendants also argued that there is no liability under Labor Code § 203 for violations of meal
2 and rest break claims alone. *Ling v. P.F. Chang's China Bistro* (2016) 245 Cal.App.4th 1242;
3 *Kirby v. Immoos Fire Protection, Inc.* (2016) 53 Cal.4th 1244.

4 47. Class Counsel estimated Defendants' maximum total exposure on the section 203 claim
5 at approximately \$2,030,944 (383 terminated employees from March 17, 2018 to October 7, 2021
6 x 30 days x \$18.78 average rate of pay x 8.9 hours in a work day). Class Counsel estimates they
7 would be awarded approximately \$507,736 in waiting time penalties. Class Counsel applied a
8 75% discount on the waiting time penalties due to the fact that Plaintiff would need to show
9 willfulness can be proved. Additionally, Class Counsel estimates it would be difficult to recover
10 waiting time penalties given that it derives from the unpaid wage and meal break claims which
11 are both subject to many individualized issues making certification of this claim difficult to
12 achieve.

13 **PAGA Penalties**

14 48. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
15 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendants'
16 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
17 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
18 are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
19 for each aggrieved employee per pay period for the initial violation and two hundred dollars
20 (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to
21 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
22 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
23 percent allocated to the affected employees. The limitations period as for all penalties is one year
24 prior to the filing of the complaint.

25 49. The provisions of the Labor Code potentially triggering PAGA penalties in this case
26 include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194,
27 Defendants asserted that if PAGA penalties were mandatory, an employer's PAGA liability
28 would be huge because of the possibility of collecting multiple civil penalties for a single

1 violation, and thus such penalties would almost always dwarf the damages available under the
2 causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor
3 Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty
4 amount specified by this part if, based on the facts and circumstances of the particular case, to do
5 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” *See,*
6 *e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018),
7 (recognizing court’s ability to reduce PAGA penalties). Courts have held that situations similar to
8 the current one (e.g. injuryless violations, technical errors, and substantial compliance) should
9 lead to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.
10 App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer
11 “attempted to comply with the law”); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK
12 (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA
13 penalties more than 80% – from \$2.8 million to \$500,000 – when “employees suffered no injury”
14 employers were “not aware” of the violation and “took prompt steps to correct all violations once
15 notified”). Defendants here maintained that it had a strong argument that it would be unjust to
16 award maximum PAGA penalties.

17 50. Furthermore, PAGA penalties are also derivative of each and every other claim, and
18 Defendants therefore argued the PAGA claims would be subject to the same defenses to the
19 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
20 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for
21 initial violations under the applicable statutes, because Defendants had never been notified of the
22 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
23 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
24 4th 1157, 1211-12. Therefore if Labor Commissioner - on whose behalf Plaintiff is prosecuting
25 this action for civil penalties - would not impose civil penalties in a case like this, the Court may
26 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
27 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court’s reduction of PAGA civil
28 penalties by 30 percent, finding that awarding the full penalties would have been “unjust” because

1 “...a court may award a lesser amount than the maximum civil penalty amount specified by this
2 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
3 an award that is unjust, arbitrary and oppressive, or confiscatory.”

4 51. Class Counsel estimated Defendants’ maximum total exposure on the PAGA claim at
5 approximately \$820,000 (\$100 x 8,200 number of paystubs from March 17, 2020 to October 7,
6 2021). However, Class Counsel reasonably estimates they would be awarded a nominal amount
7 of approximately \$25,000-\$50,000 for their PAGA claims. Class Counsel applied discounts in
8 light of the countervailing arguments with regard to the other causes of action, and moreover the
9 Court’s power to award “a lesser amount than the maximum civil liability.” The parties also
10 considered that the purpose of PAGA is to “achieve maximum compliance with state labor
11 laws,”. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
12 settlement’s contemplated PAGA payment of \$10,000 appropriate.

13 **Unfair Business Practices**

14 52. Plaintiff pled this cause of action in order to augment their other causes of action and
15 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations
16 on Plaintiff’ wage claims, which qualify as unfair business practices, to four years rather than the
17 three years provided by statute.

18 **Summary**

19 53. The foregoing discussion has sought to explain how the settlement amount is adequate
20 in light of the merits of Plaintiff’ case. It has done this by explaining the legal basis for each of
21 Plaintiff’ causes of action, summarizing the evidence that Class Counsel gathered in support of
22 those causes of action, and relating Defendants’ legal and factual arguments that worked to
23 derogate from the strength of Plaintiff’ case.

24 54. Class Counsel had to apply appropriate discounts in light of the facts and law as
25 discussed above. In addition, meal period liability exposure is limited by the fact that not all Class
26 Members worked on the same schedule and under the same supervisors, making the certification
27 of all Class Members across all locations less than a certainty. Thus, this settlement, like most
28 others, was the product of compromise. Because of these and other risks, a recovery of

1 \$365,000.00 under the Settlement Agreement is an excellent result. Under the Settlement, each of
2 the approximately 690 Class Members will receive on average, assuming they worked throughout
3 the class period, \$293 after expenses.

4 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
5 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**
6 **STATUS THROUGH TRIAL**

7 55. The next *Clark/Kullar* factors recognize that settlements take into consideration the
8 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
9 certification. Consequently, it is proper that trial courts should keep these considerations in mind
10 when judging the adequacy of class action settlements.

11 56. Further litigation of this case posed real risks for a number of reasons. First, there were
12 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
13 the previous section. In that section, it was observed that almost every cause of action was subject
14 to some unique indeterminacy of its own, and that the derivative causes of action were thus
15 subject to a double indeterminacy, both their own and those of the causes of action on which they
16 were based.

17 57. The parties disputed the effect of these and other issues on class certification and
18 decertification. Class Counsel maintained that there were several legal and factual questions at
19 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
20 the same policies and practices applied to all Class Members and therefore common questions
21 obtained and were likely to predominate over individual inquiries. Defendants disputed these
22 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
23 such as this one. Defendants also argued that its policies were compliant with the law, while
24 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
25 give rise to common questions amenable to certification. Thus the parties had set positions on the
26 propriety of certifiability and liability that did not admit of an easy resolution.

27 58. Finally, it is always preferable to reach a relatively early resolution of a dispute
28 because, in addition to what has already been said, such resolutions save time and money that

1 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial
2 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this
3 case settled after further litigation, the settlement amount would have taken into account the
4 additional costs incurred, and there might have been less available for Class Members after all
5 was said and done. This is not just an abstract contention. The parties were moving into the phase
6 of this litigation where they would have had to depose a number of people such as managers,
7 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
8 been in the offing. The parties were also aware that a class action trial would be a complicated
9 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
10 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
11 benefits are not insignificant for anyone, especially given the current economic climate.
12 Consequently, the risk and expense of further litigation outweighed any benefit that might have
13 been gained otherwise.

14 **NOTICE TO AND REACTION OF CLASS MEMBERS**
15 **TO THE PROPOSED SETTLEMENT**

16 59. It is premature to address this factor now, at the preliminary approval stage; however,
17 some observations are in order. First, the notification procedure set out in the Settlement
18 Agreement provides the greatest likelihood that each and every Class Member will receive the
19 Notice of Class Action Settlement, Objection Form, Request for Exclusion Form, and Dispute
20 Form (“Notice Packet”), attached to the Settlement Agreement as Exhibits A, B, C, and D. Under
21 the Settlement Agreement, the Settlement Administrator will send the Notice Packet to each Class
22 Member via First Class U.S. mail. (Exh. 1, §41). Before mailing, the Settlement Administrator
23 will perform a search based on the National Change of Address Database for information to
24 update and correct for any known or identifiable address changes. (Exh. 1, §42) If the Notice
25 Packet is returned as non-deliverable on or before the Response Deadline and a new address is
26 obtained by way of a returned Notice Packet, then the Settlement Administrator will promptly
27 forward the original Notice Packet to the updated address via first-class regular U.S. mail,
28 indicating on the original packet the date of such re-mailing. (Exh. 1, §42) Thus, most, if not all,

1 Class Members will likely receive the Notice Packet.

2 60. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
3 claims involved, the terms of the settlement, and their options thereunder. They provide for a
4 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
5 The efforts taken to ensure that Class Members receive the Notice Packet and are well informed
6 about the settlement augur a favorable response rate.

7 61. All Class Members will benefit because Defendants who has been sued is generally
8 more likely to comply with the law in the future. If a Class Member disputes the number of
9 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the
10 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury
11 the workweeks that the Class Member claims to have actually worked for Defendants during the
12 Class Period. (Exh. 1, §44). After consultation with Class Counsel and Defendants' Counsel, the
13 Class Action Administrator will make a determination of the Class Member's total workweeks
14 during the applicable period. *Id.*

15 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

16 62. The foregoing discussion establishes the fairness of the class-action settlement in the
17 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
18 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
19 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour
20 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
21 Defendants have agreed to pay fair value to settle Plaintiff' claims given the existence of legal
22 uncertainty, particularly with regard to Plaintiff' claim for failure to provide proper meal periods.
23 From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class
24 Counsel believe that this case could not have settled on better terms under the circumstances.
25 Request therefore is made that the settlement be granted preliminary approval so that those
26 persons whom it was intended to benefit shall be afforded the opportunity to determine its
27 adequacy.

28 **REQUEST FOR ATTORNEYS' FEES**

63. Under the Settlement, Class Counsel also requests, without opposition from Defendants, an award of Attorneys Fees and Costs consisting of: (1) no more than One Hundred Twenty One Thousand Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$121,666.67) in Attorneys' Fees and (2) Seventeen Thousand Dollars and Zero Cents (\$17,000.00) for reimbursement of Class Counsel's costs. (Exh. 1, §33). This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial work they have put into this case and, moreover, the risk they assumed by taking it in the first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated work that they have already done and for all the work they will continue to do in carrying out and overseeing the notification to Class Members, communicating with Class Members regarding their claims, and assisting in the administration of the settlement if it is preliminarily approved.

64. My firm took this case on a contingent-fee basis against a business represented by a reputable defense firm. When we take contingent cases, we must pay careful attention to the economics involved or one bad case can destroy years of work. Accordingly, when we take contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number of hours in a day is limited. Because of this, when we take on one particular matter, we are unable to take on other matters. When Class Counsel became involved in this case, we realized the time commitment that it would entail and we were forced to turn down matters that we otherwise should have been able to handle. In sum, this case claimed a significant portion of Class Counsel's time and attention throughout its pendency.

65. The requested fee is reasonable for the services provided to Class Members and for the benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would still be justified. Here, lodestar will substantially exceed the requested fees. Class Counsel will more fully brief the Court on its lodestar in the motion for final approval.

ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE

66. Plaintiff herein is entitled to reasonable service payment for his efforts and initiative in

1 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
2 apprising herself of his rights, deciding whether remedial action should be taken, how it should be
3 taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours with
4 Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only his
5 own rights but also those of their co-workers by filing a class action lawsuit.

6 67. The courage it took to stand up to Defendants by filing and litigating this action in this
7 way should not be underestimated. By suing Defendant, Plaintiff increased his risk of retaliation
8 by prospective employers. Plaintiff's lawsuit has now required Defendants to expend
9 considerable resources, and Plaintiff justifiably fears the fact that she served as class
10 representative in a wage and hour class action will not be lost on a prospective employer who has
11 to choose between an applicant who has never sued a prior employer and one who has. Plaintiff
12 contends this risk is particularly real in the information age, where employers can, more easily
13 than ever, perform background checks of prospective employees, sometimes with the stroke of a
14 key. It is common for employers to screen employee candidates to determine whether they have
15 ever filed suit, and employee candidates who might be branded "litigious" are likely to be
16 screened out of the process. In fact, an entire industry has developed for providing employers
17 with background information on employee candidates.

18 68. But Plaintiff did not allow his fear of the potential repercussions of being class
19 representative to deter him from acting for the benefit of Class Members. To the contrary,
20 Plaintiff has been intimately involved in this case since its inception. She has devoted a
21 substantial amount of time to helping Class Counsel effectively develop and prosecute this action
22 at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred
23 with Class Counsel on numerous occasions to discuss every aspect of their case. Plaintiff
24 provided Class Counsel with information about Defendants and about the industry generally,
25 reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation
26 repeatedly and at length, participated in the mediation process, monitored the progress of the
27 litigation with Class Counsel, and reviewed and signed the Settlement Agreement.

28 69. Plaintiff has spent a significant amount of time with Class Counsel detailing his

1 knowledge of Defendants' practices and helping Class Counsel with the prosecution of this
2 action. He has diligently, adequately, and fairly represented Class Members, and has not placed
3 his interests above any member of the putative class. The payment to Plaintiff is intended to
4 recognize his time and effort on behalf of the Class. The amount requested is fair and appropriate
5 based on his contribution and involvement. For example, Plaintiff instigated the lawsuit by
6 bringing these violations to the attention of Class Counsel. She spent several hours answering
7 questions and providing information to Class Counsel throughout the pendency of this action. She
8 identified witnesses, explained to Class Counsel day to day business practices of Defendants with
9 regard to work schedules and meal breaks, etc. The parties are in agreement that Plaintiff is
10 entitled to an enhancement for his time and effort in this matter. This sort of payment to a class
11 representative has been a common feature of settlements negotiated by Class Counsel and has
12 been routinely approved by trial courts.

13 70. In light of the foregoing, Class Counsel believes that the Class Representative
14 Enhancement payment in the amount of Five Thousand Five Hundred Dollars and Zero Cents
15 (\$5,000.00) is fair and reasonable. This amount is a far cry from the \$50,000 of enhancement
16 awards to the two named plaintiff approved by the trial court in *Clark*. See *Clark, supra*, 175
17 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that
18 class representative are not overcompensated at the expense of the class, modest incentive awards
19 in employment class actions, such as the one here, are necessary not only to compensate class
20 representative for the time they spend in the case, but also, and more importantly, to encourage
21 aggrieved employees to challenge questionable employment practices notwithstanding the very
22 real consequences they may face.

23 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

24 71. The proposed Classes satisfy the criteria for certification of a settlement class under
25 California law, as embodied in California Code of Civil Procedure § 382. Defendants have agreed
26 to the certification of the class for settlement purposes. In general, courts may take a proposed
27 settlement into account in evaluating the propriety of class certification. See *Dunk v. Ford Motor*
28 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a "lesser standard" of scrutiny applies in

1 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
2 consideration the fact that the parties have settled their claims and stipulated to certification for
3 settlement purposes when assessing typicality and adequacy.

4 a. Numerosity. The putative classes are so numerous that joinder of all members is
5 impractical. Class Members are “all current and former non-exempt employees who worked for
6 Defendants in California at any time between March 17, 2017 to the date of Preliminary Approval
7 or such earlier date as Defendants may hereafter designate pursuant to paragraph 60(b) of the
8 Settlement Agreement.” There are approximately 690 persons answering to this definition. Thus,
9 there are a sufficient number of Class Members to warrant certifying this as a class action for
10 settlement purposes.

11 b. Ascertainability. The putative classes are defined in a manner that is precise,
12 objective, and ascertainable. The Class Members have already been identified by reference to
13 Defendants’ payroll and personnel records.

14 c. Typicality. A class representative’s claims are typical when they arise from the
15 same event, practice, or course of conduct that gives rise to the claims of other putative class
16 members, and if their claims rest on the same legal theories. The class representative’s claims
17 must be “typical” but not necessarily identical to the claims of other class members. It is
18 sufficient that the representative is similarly situated so that he or she will have the motive to
19 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
20 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been
21 the law in California that the class representative must have identical interests with the class
22 members.”). Thus, it is not necessary that the class representative should have personally incurred
23 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
24 (2001) 91 Cal.App.4th 224, 228.

25 Plaintiff’ claims are typical of Class Members’ claims because they arose from the same
26 factual basis and are based on the same legal theories. Plaintiff was employed by Defendants
27 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
28 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central

1 issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to
2 provide meal and rest periods etc.), which would arise if this were an individual action brought by
3 Plaintiff, apply to the other Class Members as well, and the answer to these questions would
4 determine Defendants' liability to the entire putative class. Thus, Plaintiff's claims are typical of
5 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

6 d. Adequacy. A class representative must possess the same interest and suffer the
7 same injury as the class members. "To assure 'adequate' representation, the class representative's
8 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
9 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
10 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
11 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

12 Plaintiff does not have any conflicts with the class and in fact his interests are aligned with
13 those of the class. Because Plaintiff's claims are identical to those that would be asserted by the
14 unnamed Class Members were they before the Court, Plaintiff has every interest in zealously
15 representing the unnamed class members. Plaintiff has not shrunk from this responsibility.
16 Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and
17 effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-
18 and-hour litigation, especially class actions, and have zealously represented the interests of the
19 class in litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

20 e. Commonality. Common questions of law or fact in this case predominate over
21 individual questions. This action involves, *inter alia*, a determination about Defendants' alleged
22 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages
23 due to allegedly common and unlawful policies, failure to pay final wages when required, failure
24 to provide accurate wage statements, failure to pay employees on a timely basis, and largely
25 derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these
26 practices, including an alleged practice of failing to provide complete meal periods, related meal
27 period policies applicable to the class, and the alleged failure to provide corresponding premium
28 payments, that affected class members in the same way. All class members were employed during

1 the Class Period. Therefore, the operative complaint delineates a common course of conduct
2 applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of
3 the discovery produced by Defendants, and their discussions with Plaintiff, Plaintiff contends the
4 evidence supports their position that the employment practices and policies of Defendants'
5 business were consistent and uniform.

6 f. Predominance. Individualized issues do not predominate over the issues of law and
7 fact that are common to the class as a whole. The principal issues of controversy are whether
8 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
9 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
10 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
11 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for
12 work performed as non-exempt employees for Defendants. These issues are suitable for common
13 adjudication because all Class Members were subject to the same employment policies and
14 Plaintiff contends the practices applied uniformly to all Class Members.

15 g. Superiority. Class resolution is superior to other available methods for the fair and
16 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
17 individually control the prosecution of separate actions. Although the injury resulting from
18 Defendants' policies and practices are real and significant, the cost of individually litigating each
19 such case against Defendants would easily exceed the value of any relief that could be obtained
20 by any one Class Member individually. If Class Members are forced to litigate their claims
21 individually this would result in about 690 individual actions against Defendants. Here, the
22 alternative methods of resolution are individual suits for relatively small amounts. Hence, an
23 individual suit would prove uneconomical for potential plaintiff because litigation costs would
24 dwarf a potential recovery.

25 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
26 actions by Class Members against Defendants asserting similar claims as here. Furthermore, Los
27 Angeles County is a compelling forum for this action given that Defendants' location is in Los
28 Angeles County and numerous Class Members work in this County.

1 i. There are no serious manageability difficulties presented by preliminarily
2 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
3 that would remain is settlement administration and responding to possible objectors.

4 72. On November 17, 2021, Plaintiff uploaded the Joint Stipulation of Class Action
5 Settlement and the Memorandum of Points and Authorities in Support of Plaintiff's Motion for an
6 Order Preliminarily Approving the Class Action Settlement, Approving Notice of Class Action
7 Settlement, and Setting Hearing for Final Approval. A true and correct copy of the confirmatory
8 email from the LWDA is attached hereto as **Exhibit 3**.

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

11 Executed this 17th day of November, at Glendale, California.

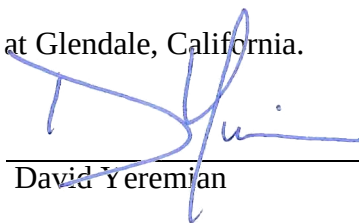
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14 David Yerman
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EXHIBIT 1

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CARE CENTER OF ARTESIA; and MODERN HERO, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MELVIN STAKELY, JR., an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

WINDSOR PALMS CARE CENTER OF
ARTESIA, a business entity of unknown form;
WINDSOR TWIN PALMS HEALTHCARE
CENTER, LLC, a California limited liability
company; MODERN HERO, INC., a
California corporation, and DOES 1 through
50, inclusive,

Defendants.

Case No.: 21STCV10507

CLASS ACTION

Assigned for All Purposes To:

Hon. Carolyn B. Kuhl

Dept.: 12

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: March 17, 2021

First Amended Complaint: June 7, 2021

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff MELVIN STAKELY, JR.
3 (“Plaintiff” or “Class Representative”), on behalf of himself and all others similarly situated, and
4 Defendant WINDSOR PALMS CARE CENTER OF ARTESIA, WINDSOR TWIN PALMS
5 HEALTHCARE CENTER, LLC, and MODERN HERO, INC. (collectively “Defendants”)
6 (collectively with Plaintiff, the “Parties”).

7 DEFINITIONS

8 The following definitions are applicable to this Settlement Agreement.

9 Definitions contained elsewhere in this Settlement Agreement will also be effective:

10 1. “Action” means *Melvin Stakely, Jr., et al. v. Windsor Palms Care Center of*
11 *Artesia., el al.*, Los Angeles County Superior Court, Case No. 21STCV10507.

12 2. “Aggrieved Employees” means all current and former non-exempt employees
13 who worked for Defendants in California at a time during the PAGA limitations which is at any
14 time between March 17, 2020 and the date of Preliminary Approval or such earlier date as
15 Defendants may hereafter designate pursuant to paragraph 60(b) of this Settlement Agreement.

16 3. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
17 Court for Class Counsel’s litigation and resolution of this Action.

18 4. “Class Counsel” means David Yeremian & Associates, Inc. and United
19 Employees Law Group, P.C.

20 5. “Class List” means a complete list of all Class Members that Defendants will
21 diligently and in good faith compile from its records and provide to the Settlement
22 Administrator within ten (10) business days after notice to Defendants of Preliminary Approval
23 of this Settlement. The Class List will be formatted in Microsoft Office Excel and will include
24 the following information from Defendants’ records: each Class Member’s full name; last-
25 known mailing address; Social Security number; and dates of employment as a non-exempt
26 employee in California during the Class Period.

27 6. “Class Member(s)” or “Settlement Class” means all current and former non-
28 exempt employees who worked for Defendants in California at any time between March 17,

1 2017 and the date of Preliminary Approval or such earlier date as Defendants may hereafter
2 designate pursuant to paragraph 60(b) of this Settlement Agreement with the exception of any
3 person who submits a timely and valid request for exclusion.

4 7. “Class Period” means the period from March 17, 2017 to the date of
5 Preliminary Approval or such earlier date as Defendants may hereafter designate pursuant to
6 paragraph 60(b) of this Settlement Agreement.

7 8. “Class Representative Enhancement Payment” means the amount approved by
8 the Court to be paid to Plaintiff in recognition of his contributions to the Action on behalf of
9 Class Members and Aggrieved Employees.

10 9. “Court” means the Superior Court of California, County of Los Angeles.

11 10. “Defendants” means WINDSOR PALMS CARE CENTER OF ARTESIA,
12 WINDSOR TWIN PALMS HEALTHCARE CENTER, LLC, and MODERN HERO, INC.

13 11. “Effective Date” means: (a) the date of entry of the Court’s order granting final
14 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
15 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is
16 filed, then the date when the time expires to file an appeal of the Court’s grant of Final
17 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice
18 of Appeal of the Court’s grant of Final Approval of the Settlement Agreement, then the date the
19 appeal is finally resolved, with the final approval unaffected.

20 12. “Individual Settlement Payment” means each Class Member’s share of the Net
21 Settlement Amount.

22 13. “Gross Settlement Amount” is the amount of Three Hundred Sixty-Five
23 Thousand Dollars and Zero Cents (\$365,000.00), which is the maximum amount to be paid by
24 Defendants pursuant to this Settlement Agreement. The Gross Settlement Amount includes all
25 Individual Settlement Payments to Class Members, the Class Representative Enhancement
26 Payment to Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the Settlement
27 Administration Costs to the Settlement Administrator and the PAGA Payment as specified in
28 this Agreement. Defendants shall pay the employer’s share of payroll taxes due on the portion

1 of Settlement Payments allocated to wages separately and in addition to the Gross Settlement
2 Amount. The Parties agree that Defendants will have no obligation to pay any amount in
3 connection with this Settlement Agreement apart from the Gross Settlement Amount and the
4 employer's share of payroll taxes due on the portion of Settlement Payments allocated to
5 wages, and that none of the Gross Settlement Amount will revert to Defendants.

6 14. "Net Settlement Amount" means the Gross Settlement Amount, less the
7 Attorneys' Fees and Costs, Class Representative Enhancement Payments, Settlement
8 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in
9 this Agreement.

10 15. "Objection" means any written objection to this Settlement sent by a Class
11 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.
12 An Objection to Settlement must be sent to the Settlement Administrator within the time
13 limitations set forth in this Stipulation.

14 16. "Notice of Class Action Settlement" means the notice of settlement, attached as
15 **Exhibit A**, to be mailed to all members of the Settlement Class upon Preliminary Approval.

16 17. "Notice Packet" means the Notice of Class Action Settlement attached as
17 **Exhibit A**, the Objection Form attached as **Exhibit B**, the Request for Exclusion Form attached
18 as **Exhibit C**, and the Dispute Form attached as **Exhibit D** to be mailed to all members of the
19 Settlement Class upon Preliminary Approval.

20 18. "PAGA" means the California Labor Code Private Attorneys General Act of
21 2004.

22 19. "PAGA Payment" means the payment made hereunder to the California Labor
23 and Workforce Development Agency and the Settlement Class Members for settlement of
24 claims for civil penalties under PAGA.

25 20. "PAGA Period" means the period from March 17, 2020 to the date of
26 Preliminary Approval or such earlier date as Defendants may hereafter designate pursuant to
27 paragraph 60(b) of this Settlement.

28 21. "Parties" means Plaintiff and Defendants collectively.

1 22. “Plaintiff” means MELVIN STAKELY, JR.

2 23. “Preliminary Approval” means the Court order granting preliminary approval of
3 the Settlement Agreement.

4 24. “Released Claims” means all causes of action and factual or legal theories that
5 were alleged in the operative complaints or that could have been alleged against Defendants
6 based on the facts contained in the operative complaints, including violations of California
7 Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.3, 226.7, 245, 246, 510, 512, 558,
8 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, and 2699 *et seq.*,
9 California Code of Regulations, Title 8, section 11000 *et seq.*, and California Business &
10 Professions Code §§ 17200 to 17208, and the applicable IWC Wage Orders from the following
11 claims for relief: (a) failure to pay minimum, regular, or hourly wages, (b) failure to pay
12 overtime wages or accurate overtime wages, (c) failure to provide meal breaks and failure to
13 pay premium pay for missed meal breaks, (d) failure to provide rest breaks and failure to pay
14 premium pay for missed rest breaks, (e) failure to provide complete, accurate or properly
15 formatted wage statements, (f) failure to timely pay wages during employment or upon
16 separation, (g) failure to keep required payroll records, (h) unfair business practices that could
17 have been premised on the claims, causes of action or legal theories of relief described above or
18 any of the claims, causes of action or legal theories of relief pleaded in the operative complaint;
19 (i) all claims under the California Labor Code Private Attorneys General Act of 2004 that could
20 have been premised on the claims, causes of action or legal theories described above or any of
21 the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) any
22 other claims or penalties under the California Labor Code or other wage and hour laws pleaded
23 in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said
24 claims, causes of action or legal theories of relief. The period of the Release shall extend to the
25 limits of the Class Period. The *res judicata* effect of the Judgment will be the same as that of
26 the Release. Defendants shall be entitled to a release of Released Claims which occurred during
27 the Class Period only during such time that the Settlement Class Member was classified as non-
28 exempt, and expressly excluding all other claims for vested benefits, wrongful termination,

1 unemployment insurance, disability, social security, workers' compensation, claims while
2 classified as exempt, and claims outside of the Class Period.

3 25. "Released Parties" means Defendants, and their past, present and/or future,
4 direct and/or indirect officers, directors, members, shareholder, employees, agents principals,
5 heirs, representatives, accountants, auditors, attorneys, consultants, insurers, reinsurers, and
6 each of their respective successors; and predecessors in interest, assigns, subsidiaries, affiliates,
7 and parents, if any.

8 26. "Request for Exclusion" means a timely written request by a Class Member to
9 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,
10 address, telephone number of the Class Member requesting exclusion; (ii) be signed by the
11 Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class
12 Member does not wish to be included in the Settlement; and (v) be postmarked on or before the
13 Response Deadline.

14 27. "Response Deadline" means the deadline by which Class Members must
15 postmark to the Settlement Administrator Requests for Exclusion or Objections to the
16 Settlement. The Response Deadline will be forty-five (45) calendar days from the initial
17 mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the
18 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
19 extended to the next day on which the U.S. Postal Service is open.

20 28. "Settlement Administrator" means CPT Group, Inc. or any other third-party
21 class action settlement administrator approved by the Parties and the Court for the purposes of
22 administering this Settlement. The Parties each represent that they do not have a financial
23 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
24 Administrator that could create a conflict of interest.

25 29. "Settlement Administration Costs" includes all costs payable to the Settlement
26 Administrator for administering this Settlement, including, but not limited to, printing,
27 distributing, and tracking notice and other documents for this Settlement, tax reporting,
28 distributing all payments to be made pursuant to this Settlement, and providing necessary

1 reports and declarations, as requested by the Parties. After conference and consultation with the
2 Settlement Administrator, no more than Eleven Thousand Five Hundred Dollars and Zero Cents
3 (\$11,500) will be allocated to Settlement Administration.

4 30. “Workweeks” means the number of calendar weeks that the Class Member
5 worked as a non-exempt employee in California during the Class Period.

6 31. “Workweek Value” means the value of each compensable Workweek, as
7 determined by the formula set forth in herein.

8 **TERMS OF AGREEMENT**

9 Plaintiff, on behalf of himself and the Settlement Class, and Defendants agree as
10 follows:

11 32. Funding of the Gross Settlement Amount. Within 15 business days after the
12 Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified
13 Settlement Fund, with the Settlement Administrator. The Gross Settlement Amount will be used
14 to pay: (i) Individual Settlement Amounts; (ii) the Class Representative Enhancement Payment
15 to Plaintiff; (iii) Attorneys’ Fees and Costs; (iv) the PAGA Payment; and the (v) Settlement
16 Administration Costs.

17 33. Attorneys’ Fees and Costs. Class Counsel will seek an award of Attorneys’ Fees
18 and Costs of not more than One Hundred Twenty-One Thousand Six Hundred Sixty-Six
19 Dollars and Sixty-Seven Cents (\$121,666.67) in attorney’s fees and not more than Seventeen
20 Thousand Dollars and Zero Cents (\$17,000.00) in costs, and Defendants agree not to oppose
21 such application. All Attorneys’ Fees and Costs will be paid from the Gross Settlement Amount.
22 Plaintiff and Class Counsel will not have the right to revoke this Settlement in the event the
23 Court fails to approve the amount of Attorneys’ Fees and Costs sought by Class Counsel. Any
24 portion of the Attorneys’ Fees and Costs not awarded to Class Counsel will be added to the Net
25 Settlement Amount.

26 34. Class Representative Enhancement Payment. Plaintiff will apply to the Court for
27 a Class Representative Enhancement Payment of not more than Five Thousand Dollars and Zero
28 Cents (\$5,000.00) for his effort and work in prosecuting the Action on behalf of Class Members

1 and Aggrieved Employees and Defendants agree not to oppose such application. The Class
2 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount,
3 will be in addition to Plaintiff's right to an Individual Settlement Payment pursuant to the
4 Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on
5 the payments made pursuant to this paragraph and will hold Defendants harmless from any claim
6 or liability for taxes, penalties, or interest arising as a result of the payments. Plaintiff will not
7 have the right to revoke this Settlement in the event the Court fails to approve the amount sought
8 by Plaintiff as a Class Representative Enhancement Payment. Any portion of the Class
9 Representative Enhancement Payment not awarded to the Class Representative will be added to
10 the Net Settlement Amount.

11 35. Settlement Administration Costs. The Settlement Administrator will be paid for
12 the reasonable costs of administration of the Settlement and distribution of payments. These
13 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the
14 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
15 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
16 payments to be made pursuant to the Settlement, and providing necessary reports and
17 declarations. Class Counsel obtained a "not to exceed" quote from the Settlement Administrator
18 to complete the administration for Eleven Thousand Five Hundred Dollars and Zero Cents
19 (\$11,500). The Settlement Administrator's "not to exceed" quote will represent the Settlement
20 Administrator's agreement that, based on the class size and distributions under the terms of this
21 Settlement, the costs for administration of the terms of this Settlement will not exceed the
22 specified amount. All of the Settlement Administration Costs shall be paid from the Gross
23 Settlement Amount upon completion of all duties required to be performed by the Settlement
24 Administrator under the terms of this Settlement, or as otherwise required by the Court, subject
25 to the "not to exceed" quote from the Settlement Administrator. The Settlement Administrator
26 will set up the Qualified Settlement Fund.

27 36. PAGA Payment. Ten Thousand Dollars and Zero Cents (\$10,000) shall be
28 allocated from the Gross Settlement Amount for settlement of claims for civil penalties under

1 PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such \$10,000
2 PAGA Payment, or \$7,500, to the LWDA. Twenty-five (25%) of the \$10,000 PAGA Payment,
3 or \$2,500, will be included in the Net Settlement Amount and distributed to Settlement Class
4 Members as described in this Agreement. Each Settlement Class Member's pro rata share of
5 that \$2,500 will be part of his or her Individual Settlement Payment.

6 37. Individual Settlement Payment Calculations. Individual Settlement Payments
7 will be calculated and apportioned from the Net Settlement Amount based on the number of
8 Workweeks a Class Member worked during the Class Period as a non-exempt employee in
9 California. Specific calculations of Individual Settlement Payments will be made as follows:

10 34(a). The Settlement Administrator will calculate the total number of
11 Workweeks worked by each Class Member as a non-exempt employee in California during the
12 Class Period and the aggregate total number of Workweeks worked by all Class Members as
13 non-exempt employees in California during the Class Period.

14 34(b). To determine each Class Member's estimated "Individual Settlement
15 Payment," the Settlement Administrator will use the following formula: The Net Settlement
16 Amount will be divided by the aggregate total number of Workweeks, resulting in the
17 Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by
18 multiplying each individual Class Member's total number of Workweeks by the Workweek
19 Value.

20 34(c). The entire Net Settlement Amount will be disbursed as Individual
21 Settlement Payments to Class Members. If there are any valid and timely Requests for
22 Exclusion from members of the Settlement Class, the Settlement Administrator shall
23 proportionately increase the Individual Settlement Payment for each Class Member according
24 to the number of Workweeks worked, so that the amount actually distributed to the Settlement
25 Class equals 100% of the Net Settlement Amount.

26 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
27 Class Members under this Settlement, as well as any other payments made pursuant to this
28 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to

1 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing
2 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick
3 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention
4 that this Settlement Agreement will not affect any rights, contributions, or amounts to which
5 any Class Members may be entitled under any benefit plans.

6 39. Settlement Administration Process. The Parties agree to cooperate in the
7 administration of the settlement and to make all reasonable efforts to control and minimize the
8 costs and expenses incurred in administration of the Settlement.

9 40. Delivery of the Class List. Within ten (10) business days of entry of the Court's
10 Order Granting Preliminary Approval, Defendants will provide the Class List to the Settlement
11 Administrator.

12 41. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class
13 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class
14 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
15 identified in the Class List.

16 42. Confirmation of Contact Information in the Class List and Undeliverable
17 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
18 National Change of Address Database for information to update and correct for any known or
19 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as
20 non-deliverable on or before the Response Deadline will be sent promptly via regular First-
21 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will
22 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided,
23 the Settlement Administrator will promptly attempt to determine the correct address using an
24 Accurant search/skip-trace and will then perform a single re-mailing.

25 43. Notices of Class Action Settlement. All Class Members will be mailed a Notice
26 of Class Action Settlement in the form attached as Exhibit A or as provided by Court order, an
27 Objection Form in the form attached as Exhibit B or as provided by Court order, a Request For
28 Exclusion Form in the form attached as Exhibit C or as provided by Court order, and a Dispute

1 Form in the form attached as Exhibit D or as provided by Court order.

2 44. Disputed Information on Notices of Class Action Settlement. Class Members
3 will have an opportunity to dispute the information provided in their Notices of Class Action
4 Settlement. Any Class Member wishing to dispute the information provided in their Class
5 Notice shall mail the Dispute Form to the Settlement Administrator by the Response Deadline.
6 To the extent Class Members dispute their employment dates or the number of Workweeks,
7 Class Members may produce evidence to the Settlement Administrator showing that such
8 information is inaccurate. The Settlement Administrator will advise the Parties of such dispute
9 and allow Defendants five (5) business days to respond with any additional information or
10 records. The Settlement Administrator may rely on Defendants' records without further
11 foundation to perform its calculus but must give fair weight to records provided by Class
12 Members. The Settlement Administrator will make a recommendation and the Class Member
13 may either accept it or reject it. Class Counsel shall file with the Court all disputes submitted by
14 Class Members, the evidence submitted, and the resolution of those disputes. The Court shall
15 have the right to review any decision made by the Settlement Administrator regarding a claim
16 dispute.

17 45. Requests for Exclusion. Any Class Member wishing to opt-out from the
18 Settlement Agreement must sign and return the Request for Exclusion Form, postmarked within
19 the Response Deadline to the Settlement Administrator. The postmark date will be the exclusive
20 means to determine whether a Request for Exclusion has been timely submitted. The Parties
21 and their counsel will not solicit or encourage any Class Member, directly or indirectly, to opt
22 out of the Settlement Agreement. More specifically, a Class Member may request to be
23 excluded from the effect of this Agreement, and any payment of amounts under this Agreement
24 by timely mailing a Request for Exclusion Form to the Settlement Administrator stating that the
25 Class Member wants to be excluded from this Action. The Class Member must include their
26 name, address, and signature on the Request for Exclusion Form. To be valid and timely, the
27 request to be excluded must be postmarked by the Response Deadline date that will be
28 specified in the Class Notice (no less than forty-five (45) days from the initial mailing of the

1 Class Notice by the Settlement Administrator). A Class Member who properly submits a valid
2 and timely request to be excluded from the Action will not receive any payment of any kind in
3 connection with this Agreement or this Action, will not be bound by or receive any benefit of
4 this Agreement, and will have no standing to object to the Settlement. Class Members who do
5 not timely request exclusion will be bound by the releases herein and receive an individual
6 settlement payment (“Participating Class Members”), and their request for exclusion will be
7 defective. A request for exclusion must be mailed to the Settlement Administrator at its address
8 to be provided in the Class Notice, and the Settlement Administrator will promptly transmit the
9 requests for exclusion to counsel for the parties. Class Counsel shall file with the Court all
10 requests for exclusion submitted by Class Members.

11 46. Defective Submissions. If a Class Member’s Request for Exclusion is defective
12 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
13 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
14 (3) business days of receiving the defective submission to advise the Class Member that his or
15 her submission is defective and that the defect must be cured to render the Request for
16 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
17 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
18 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within
19 that period, it will be deemed untimely.

20 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
21 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
22 timely and valid Request for Exclusion will be bound by all of its terms, including those
23 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
24 it grants final approval of the Settlement.

25 48. Objection Procedures. Any Class Members wishing to object to the Settlement
26 must sign and return the Objection Form, postmarked within the Response Deadline to the
27 Settlement Administrator or by appearing at the hearing for Final Approval. The postmark date
28 will be the exclusive means to determine whether an Objection has been timely submitted. The

1 Class Member must include their name, address, and signature on the Objection Form. The
2 Class Member must also list the reasons for objecting to the Settlement. The Settlement
3 Administrator will promptly provide any objections to the parties' counsel upon receiving
4 them. Class Counsel shall file with the Court all objections submitted by Class Members.
5 Settlement Class Members may also have a right to have their objections heard at the Final
6 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members
7 with respect to any such Objections to this Settlement, and any Class Members who request
8 exclusion from the Settlement will not have standing to object to it.

9 49. Settlement Administrator Reports. The Settlement Administrator will provide
10 Defendants' counsel and Class Counsel a weekly report of the number of Class Members who
11 have submitted valid Requests for Exclusion, Objections, and disputes regarding Workweeks
12 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties
13 any updated reports regarding the administration of the Settlement Agreement as needed or
14 requested.

15 50. Distribution and Timing of Payments. Within 20 days of the Effective Date, and
16 after Defendants have fully funded the Qualified Settlement Fund with the Gross Settlement
17 Amount, the Settlement Administrator will issue payments to: (i) all Class Members who have
18 not submitted a valid and timely Request for Exclusion, including any Class Member whose
19 notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the LWDA. The
20 Settlement Administrator will also issue a payment to itself for Court-approved services
21 performed in connection with the Settlement. The Settlement Administrator will pay Individual
22 Settlement Payments from the Net Settlement Amount to all Participating Class Members. The
23 Settlement Administrator will do so by sending a check in the appropriate amount to the Class
24 Member at the address indicated in the list of Class Member names and addresses provided by
25 Defendants, or as subsequently determined by the Settlement Administrator to be correct.

26 51. Un-cashed Settlement Checks. Class Members will receive checks for their
27 Individual Settlement Payments. Checks will remain negotiable for 180 days ("Check-Cashing
28 Deadline"). Any check not cashed within 180 calendar days will be void. The money from the

1 uncashed checks shall be distributed by the Settlement Administrator, in accordance with
2 California Code of Civil Procedure section 384. Any amounts from the settlement checks that
3 remain uncashed and otherwise unclaimed shall be tendered to the State of California
4 Controller Unclaimed Property Fund.

5 52. Certification of Completion. Upon completion of administration of the
6 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
7 such completion to the Court and counsel for all Parties.

8 53. Allocation of Individual Settlement Payments. All Individual Settlement
9 Payments will be allocated as follows: (a) ten percent as wages and (b) ninety percent as
10 penalties and interests. The Settlement Administrator will be responsible for issuing to
11 claimants a form W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions
12 allocated to penalties.

13 54. Administration of Taxes by the Settlement Administrator. The Settlement
14 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
15 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The
16 Settlement Administrator will also be responsible for withholding and forwarding all taxes and
17 penalties to the appropriate government authorities as may be required by law. The Settlement
18 Administrator will also be responsible for reporting to Defendants all amounts paid by the
19 Settlement Administrator to Class Members as wages.

20 55. Tax Liability. Defendants make no representation as to the tax treatment or
21 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not
22 relying on any statement, representation, or calculation by Defendants or by the Settlement
23 Administrator in this regard. Plaintiff and Class Members understand and agree that they will
24 be solely responsible for the payment of any taxes and penalties assessed on the payments
25 described herein and will defend, indemnify, and hold Defendants free and harmless from and
26 against any claims resulting from treatment of such payments as non-taxable damages.

27 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
28 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY

1 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
2 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
3 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
4 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
5 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
6 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
7 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
8 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
9 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
10 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
11 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
12 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
13 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
14 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
15 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
16 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
17 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
18 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
19 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
20 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
21 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
22 AGREEMENT.

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

27 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not
28 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final

1 for any other reason, then this Settlement Agreement, and any documents generated to bring it
2 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
3 this Settlement Agreement will likewise be treated as void from the beginning, it will be of no
4 force or effect whatsoever, it will not be referred to or used for any purpose whatsoever, and the
5 negotiation, terms and entry of it shall remain subject to the provisions of California Evidence
6 Code §§ 1119 and 1152.

7 Defendants deny all of the claims and allegations asserted in the Action (as defined
8 herein). Defendants have agreed to resolve this Action via this Stipulation, but to the extent this
9 Stipulation is deemed void or does not take effect, Defendants do not waive, but rather
10 expressly reserves, all rights to challenge all such claims and allegations in the Action upon all
11 procedural and factual grounds, including without limitation the ability to challenge suitability
12 for class treatment or representative adjudication on any grounds or to assert any and all
13 defenses or privileges. The Class Representative and their counsel agree that Defendants retain
14 and reserve these rights. In particular, the Class Representative and their counsel waive and
15 agree not to argue or to present any argument that Defendants would be estopped from
16 contesting class certification because it has entered into this Stipulation.

17 59. Tolerance of Opt-Outs. Defendants retain the right, in the exercise of their sole
18 discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period, if
19 more than one hundred fifty (150) Class Members opt out of this settlement.

20 60. Escalator. This settlement is based on Defendants representation that there are
21 approximately 690 Class Members and approximately 40,000 employee workweeks encompassed
22 in the Class Period as of October 7, 2021. At the time of preliminary approval, if the number of
23 employee workweeks encompassed within the Class Period exceeds 40,000 by more than 12.5%,
24 then, at Defendants' election, either (a) the Gross Settlement Amount shall be increased in
25 proportion to the percentage increase in the number of workweeks encompassed in the Class
26 Period in excess of 12.5% or (b) the ending date of the Class Period shall be changed to an earlier
27 date as of which the number of employee workweeks encompassed within the Class Period does
28 not excess 40,000 by more than 12.5%.

1 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court
2 to request the Preliminary Approval of the Settlement Agreement, and the entry of a
3 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
4 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
5 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
6 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
7 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
8 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
9 proposed Notice of Class Action Settlement.

10 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
11 the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement,
12 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
13 conducted to determine the Final Approval of the Settlement Agreement along with the
14 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative
15 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
16 Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30)
17 days after the Response Deadline. Class Counsel will be responsible for drafting all documents
18 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
19 attorneys' fees and costs application to be heard at the final approval hearing.

20 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
21 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
22 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
23 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
24 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
25 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
26 Agreement.

27 64. General Release by Plaintiff. In consideration for the consideration set forth in
28 this Agreement, Plaintiff, for himself, his heirs, successors and assigns, does waive, release,

1 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
2 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
3 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
4 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
5 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
6 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
7 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
8 state or other governmental statute, law, regulation or ordinance, including any claims arising
9 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
10 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
11 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
12 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
13 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
14 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &
15 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
16 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waive
17 and relinquish any and all claims, rights, or benefits that they may have under California Civil
18 Code § 1542, which provides as follows:

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

26 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
27 which they now know or believe to exist, but they expressly agree to fully, finally and forever
28 settle and release any and all claims against the Released Parties, known or unknown, suspected

1 or unsuspected, which exist or may exist against Released Parties at the time of execution of
2 this Agreement, including, but not limited to, any and all claims relating to or arising from
3 Plaintiff's employment with Defendants. The Parties further acknowledge, understand and
4 agree that this representation and commitment is essential to the Agreement and that this
5 Agreement would not have been entered into were it not for this representation and
6 commitment.

7 65. Release by All Settlement Class Members. Plaintiff and all Class Members who
8 do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or
9 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
10 finally release and discharge the Released Parties from any and all of the Released Claims for
11 the entirety of the Class Period. This waiver and release will be final and binding on the
12 Effective Date and will have every preclusive effect permitted by law. Plaintiff and the
13 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
14 different from those they now know or currently believe to be true with respect to the Released
15 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
16 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
17 Settlement Class Members shall be deemed to have, and by operation of the final judgment
18 approved by the Court, shall have, fully, finally, and forever settled and released all of the
19 Released Claims. The parties understand and specifically agree that the scope of the release
20 described in this Paragraph: is a material part of the consideration for this Agreement; was
21 critical in justifying the agreed upon economic value of this settlement and without it
22 Defendants would not have agreed to the consideration provided; and is narrowly drafted and
23 necessary to ensure that Defendants are obtaining peace of mind regarding the resolution of
24 claims that were or could have been alleged based on the facts, causes of action, and legal
25 theories contained in the operative complaint in the Action.

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

1 the Settlement.

2 67. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or
3 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
4 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any
5 person or entity, except potential class members and as shall be contractually required to
6 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff
7 and Class Counsel agree not to issue press releases, communicate with, or respond to any
8 media or publication entities, publish information in manner or form, whether printed or
9 electronic, on any medium or otherwise communicate, whether by print, video, recording or
10 any other medium, with any person or entity concerning the Settlement, including the fact of
11 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
12 shall be contractually required to effectuate the terms of the Settlement.

13 68. No Unalleged Claims. Except for those claims brought forth under *Melvin*
14 *Stakely, Jr., et al. v. Windsor Palms Care Center of Artesia, et al.*, Los Angeles County Superior
15 Court, Case No. 21STCV10507 to the extent they are not covered under the Released Claims,
16 Plaintiff and Class Counsel represent that they are not currently aware of any: (a) unalleged
17 claims in addition to, or different from, those which are finally and forever settled and released
18 against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon
19 which any claims or causes of action could be brought against Defendants, except such facts
20 and theories specifically alleged in the operative complaints in this Action. Plaintiff and
21 Plaintiff's Counsel will further represent that, other than the instant Action, they have no
22 current intention of asserting any other claims against Defendants in any judicial or
23 administrative forum. Plaintiff and Plaintiff's Counsel will further represent that they do not
24 currently know of or represent any persons who have expressed any interest in pursuing
25 litigation or seeking any recovery against Defendants. The Parties acknowledge, understand
26 and agree that the representations described in this paragraph are essential to the Settlement
27 Agreement and that this Settlement Agreement would not have been entered into were it not for
28 this representation.

1 69. Entire Agreement. This Settlement Agreement and any attached Exhibits
2 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
3 written or oral agreements may be deemed binding on the Parties.

4 70. Amendment or Modification. This Settlement Agreement may be amended or
5 modified only by a written instrument signed by counsel for all Parties or their successors-in-
6 interest.

7 71. Binding on Successors and Assigns. This Settlement Agreement will be binding
8 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
9 defined.

10 72. California Law Governs. All terms of this Settlement Agreement and Exhibits
11 hereto will be governed by and interpreted according to the laws of the State of California.

12 73. Headings. The headings contained in this Settlement Agreement are for
13 convenience and reference purposes only and will not be given weight in its construction.

14 74. Execution and Counterparts. This Settlement Agreement is subject only to the
15 execution of all Parties. However, the Settlement may be executed in one or more counterparts.
16 All executed counterparts and each of them, including facsimile and scanned copies of the
17 signature page, will be deemed to be one and the same instrument provided that counsel for the
18 Parties will exchange among themselves original signed counterparts.

19 75. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
20 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
21 and have arrived at this Settlement after arm's-length negotiations and in the context of
22 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
23 further acknowledge that they are each represented by competent counsel and that they have
24 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
25 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
26 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
27 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
28 reasonable.

1 76. Invalidity of Any Provision. Before declaring any provision of this Settlement
2 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
3 extent possible consistent with applicable precedents so as to define all provisions of this
4 Settlement Agreement valid and enforceable.

5 77. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
6 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
7 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
8 request from the Court, and either party may appeal any court order that materially alters the
9 Settlement Agreement's terms.

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

24 The Parties understand and acknowledge that this Settlement Agreement constitutes a
25 compromise and settlement of disputed claims. No action taken by the Parties whether
26 previously or in connection with the negotiations or proceedings connected with the Settlement
27 or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any
28 allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any

1 party of any fact, fault, liability, or wrongdoing of any kind whatsoever.

2 Neither the Settlement, nor any act performed or document executed pursuant to or in
3 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission
4 of, or evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any
5 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be
6 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in
7 the Action or in any proceeding in any court, administrative agency or other tribunal; or
8 construed as an admission by Plaintiff regarding the validity of any allegation or claim asserted
9 in this Action or that Plaintiff has waived any allegation or claim asserted in the Action.

10 79. Waiver. No waiver of any condition or covenant contained in this Settlement or
11 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
12 constitute a further waiver by such party of the same or any other condition, covenant, right or
13 remedy.

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

20 81. Representation By Counsel. The Parties acknowledge that they have been
21 represented by counsel throughout all negotiations that preceded the execution of this
22 Settlement, and that this Settlement has been executed with the consent and advice of counsel.
23 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
24 Settlement Agreement.

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

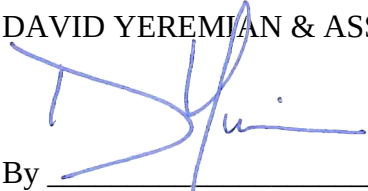
27 83. Cooperation and Execution of Necessary Documents. All Parties will cooperate
28 in good faith and execute all documents to the extent reasonably necessary to effectuate the

terms of this Settlement Agreement.

84. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

SO AGREED AND STIPULATED.

DATED: November 8, 2021

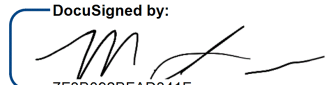
DAVID YEREMIAN & ASSOCIATES, INC.

By _____
David Yeremian
Natalie Haritoonian
Attorneys for Plaintiff MELVIN
STAKELY, JR and all others similarly situated

DATED: November __, 2021

DE CASTRO LAW GROUP, P.C.

By _____
Jose-Manuel A. de Castro
David G. Larmore
Lori V. Minassian
Attorneys for Defendants WINDSOR PALMS
CARE CENTER OF ARTESIA, WINDSOR
TWIN PALMS HEALTHCARE CENTER,
LLC, and MODERN HERO, INC.

DATED: November 2, 2021

DocuSigned by:

By _____
7F3B892BFA0341F...
Plaintiff Melvin Stakely, Jr.

1 terms of this Settlement Agreement.

2 84. Binding Agreement. The Parties warrant that they understand and have full
3 authority to enter into this Settlement, and further intend that this Settlement will be fully
4 enforceable and binding on all parties, and agree that it will be admissible and subject to
5 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
6 provisions that otherwise might apply under federal or state law.

7 **SO AGREED AND STIPULATED.**

8
9 DATED: November __, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

10
11 By _____
12 David Yeremian
13 Natalie Haritonian
14 Attorneys for Plaintiff MELVIN
15 STAKELY, JR and all others similarly situated

16 DATED: November 3, 2021

DE CASTRO LAW GROUP, P.C.

17
18 
19 By _____
20 Jose-Manuel A. de Castro
21 David G. Larmore
22 Lori V. Minassian
23 Attorneys for Defendants WINDSOR PALMS
24 CARE CENTER OF ARTESIA, WINDSOR
25 TWIN PALMS HEALTHCARE CENTER,
26 LLC, and MODERN HERO, INC.

27 DATED: November __, 2021

28 By _____
Plaintiff Melvin Stakely, Jr.

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DATED: November 3, 2021

WINDSOR PALMS CARE CENTER OF
ARTESIA, WINDSOR TWIN PALMS
HEALTHCARE CENTER, LLC, and
MODERN HERO, INC.

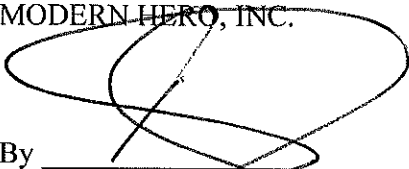
By 
Name: _____
Title: General Counsel

EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING DATE FOR COURT APPROVAL**

Melvin Stakely, Jr., et al. vs. Windsor Palms Care Center of Artesia, et al., Case No. 21STCV10507

As a current or former non-exempt employee of Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. who worked in California, you may be entitled to receive money from a class action settlement.

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:

The Los Angeles County Superior Court has authorized this Class Notice. This is not a solicitation from a lawyer.

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF WINDSOR PALMS CARE CENTER OF ARTESIA, WINDSOR TWIM PALMS HEALTHCARE CENTER, LLC, AND MODERN HERO, INC. WHO WORKED IN CALIFORNIA AT ANY TIME SINCE MARCH 17, 2017, YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT.

- A proposed settlement of \$365,000.00 (the “Gross Settlement Amount”) will be used to pay claims to: current and former non-exempt employees of Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. who worked in California from March 17, 2017 through the date the Court grants preliminary approval of this settlement, or an earlier date as of which the total number of employee workweeks covered by the settlement reaches an agreed-upon maximum (such periods of time, the “Class Period” and such employees, the “Class Members”).
- The settlement resolves a lawsuit entitled *Melvin Stakely Jr., et al. vs. Windsor Palms Care Center of Artesia., et al.*, Case No. 21STCV10507 (the “Lawsuit”) over whether Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. properly paid employees for all hours worked, provided employees meal and rest periods, and other legal consequences that would follow from not doing so, provided accurate wage statements, paid all wages upon termination, timely paid all wages, and kept required payroll records. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to persons like you, and releases Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc.
- The Court has not made a determination of the validity of the claims in the Lawsuit. Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. deny any and all liability arising from any of the claims and contends that at all relevant times it properly compensated all employees and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of workweeks worked, rounded up to the nearest full workweek, during the Class Period.
- **PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

You worked a total number of <<Work Weeks>> during the Class Period.

Based on your workweeks it is expected that your gross settlement payment before payroll taxes is approximately <<EstISP>>

Each settlement payment will be allocated as follows for tax purposes: ten percent as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member's share of taxes and withholdings; and ninety percent as interest, penalties, and liquidated damages, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	If you do not do anything, you will receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will revert to the State of California Controller Unclaimed Property Fund, but you will still be deemed to have released your claims.
OPT OUT	If you opt out, you will not receive any payment and will retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court. You may object by following the procedures set forth below.
OBJECT TO THE WORKWEEK CALCULATION	If you believe that you worked a different amount of workweeks than identified above, you may object to that calculation by following the procedures set forth below.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. Regardless of whether you timely file and serve a written objection, you may ask to speak about your objection at the hearing. You can also send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Los Angeles County Superior Court. The person who sued is called "Plaintiff" and the organizations they sued are called "Defendants."

2. What is the Lawsuit about?

The Representative Plaintiff, Melvin Stakely Jr., sued Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc., regarding allegations that they violated of the California Labor Code, the California Business and Professions Code, including causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Violation of Business & Professions Code § 17200, *et seq.*; and (10) Penalties Pursuant to Labor Code § 2698, *et seq.*

3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Representative Plaintiff won at trial. There has been no trial in this case and the Court has not decided in favor of the Representative Plaintiff or Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Representative Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

5. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under Section IV of the parties' Joint Stipulation of Class Settlement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

Under the proposed Settlement, Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. will pay \$365,000 to fully and finally resolve all claims in the Action (the "Gross Settlement Amount"). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the "Net Settlement Amount") will be the Gross Settlement Amount, minus the following amounts: (a) Settlement Administration Costs, which shall not exceed \$11,500; (b) enhancement payments to the Plaintiff not to exceed \$5,000 for her work and efforts in prosecuting this case; (c) Class Counsel's attorney's fees not to exceed one-third of the Gross Settlement Amount, or \$121,666.67; (d) reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$17,000; and (e) payment of \$7,500 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA ("LWDA Payment"). The attorneys' fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval. The Net Settlement Amount will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

If you do not dispute your workweek calculation, and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

6. When would I get my payment?

The Court will hold a hearing on **[ENTER DATE AND TIME]** to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at **1-XX-XXX-XXXX**, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

7. What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiffs and Class Members who have not effectively opted-out of the settlement as described below, fully release Rapid Manufacturing, and their past, present and/or future, direct and/or indirect, officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents if any, without limitation ("Released Parties") of all causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the facts contained in the operative complaints, including all of the following claims for relief: (a) failure to pay minimum, regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c) failure to provide meal breaks and failure to pay premium pay for missed meal breaks, (d) failure to provide rest breaks and failure to pay premium pay for missed rest breaks, (e) failure to provide complete, accurate or properly formatted wage statements, (f) failure to timely pay wages during employment or upon separation, (g) failure to maintain accurate records, (h) 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; (i) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) any other claims or penalties under the California Labor Code or other wage and hour laws pleaded in the Action; and (k) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief. The time period covered by this release March 17, 2017 through the date the Court grants preliminary approval of this settlement (or an earlier date as of which the the total number of employee workweeks covered by the settlement reaches an agreed-upon maximum).

8. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. You will have 45 days from the date of mailing of this Class Notice to opt out of this settlement. To do so, you must fill out the Request for Exclusion Form with your name, address, and signature. You must sign and return the Request for Exclusion Form and it must be mailed to the Settlement Administrator, CPT Group, Inc., _____, California _____ and be postmarked no later than **[ENTER DATE]**, or it will not be considered and you will be bound by the settlement.

9. Do I have a lawyer in this case?

The Court has appointed David Yeremian of DAVID YEREMIAN & ASSOCIATES, INC., 535 N. Brand Blvd., Suite 705, Glendale, California 91203, telephone 818-230-8380 and Walter Haines of UNITED EMPLOYEES LAW GROUP, P.C., 5500 Bolsa Ave. Suite 201, Huntington Beach, California 92649, telephone 310-652-2242 to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated

from the Total Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees up to one-third of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel.

11. How do I tell the Court that I do not like the settlement?

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

You may object to the proposed settlement in writing. You will have 45 days from the date of mailing of this Class Notice to object to this settlement in writing. To do so, you must fill out the Objection Form with your name, address, and signature. You must also state your reasons for objecting to the settlement. You must sign and return the Objection Form and it must be mailed out to the Settlement Administrator, CPT Group, Inc., _____, California _____, and be filed or postmarked on or before **[ENTER DATE]**. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

12. How do I dispute my workweek calculation?

To the extent you would like to dispute your employment dates or the number of workweeks with which you have been credited, you must mail the Dispute Form to the Settlement Administrator, CPT Group, Inc., _____, California _____, and postmarked on or before **[ENTER DATE]**. You may produce evidence to the Settlement Administrator showing that such information is inaccurate. Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc. may respond with any additional information or records. The Settlement Administrator may rely on Windsor Palms Care Center of Artesia, Windsor Twin Palms Healthcare Center, LLC, and Modern Hero, Inc.'s records without further foundation to perform its calculus but must give fair weight to records provided by you. The Settlement Administrator will make a recommendation and you may either accept it or reject it.

13. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on **[ENTER DATE AND TIME]** at the Los Angeles County Superior Court, Department 12, 312 North Spring Street, Los Angeles, California 90012. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

14. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

15. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter stating that it is your "Notice of Intention to Appear" in the settlement. Be sure to include your name, address, and telephone number. Your Notice of Intention to Appear must be postmarked no later than **[ENTER DATE]**, and be sent to the Settlement Administrator, CPT Group, Inc., at the address listed above.

16. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call **1-XXX-XXX-XXXX** or write the Settlement Administrator, CPT Group, Inc., located at _____, California _____.

You can also access the Los Angeles Superior Court Case Information Portal at <http://www.lacourt.org/casesummary/Ui/index.aspx>, or by visiting the Clerk's Office at the Los Angeles County Superior Court, located 312 North Spring Street, Los Angeles, California 90012, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

The Settlement Administrator has also setup a website which has links to this Class Notice and other documents related to the proposed settlement, including the Joint Stipulation of Class Settlement. The website is: **[ENTER WEBSITE URL]**.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

OBJECTION FORM

MELVIN STAKELY JR. vs. WINDSOR PALMS CARE CENTER OF ARTESIA, ET AL.
Los Angeles County Superior Court, Case No. 21STCV1050720

**TO OBJECT TO THE SETTLEMENT, YOU MUST FILL OUT, SIGN, AND RETURN
THIS FORM, POSTMARKED ON OR BEFORE **INSERT DATE**, 2021, TO CPT
GROUP, INC. AT **INSERT ADDRESS**].**

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):
[ADDRESS LINE 1] _____
[ADDRESS LINE 2] _____
[TELEPHONE NUMBER] _____

**THIS FORM IS TO BE USED ONLY IF YOU WANT TO OBJECT TO THE PROPOSED
SETTLEMENT.**

I object to the settlement for the following reasons:

(Attach additional pages if necessary.)

Signed on _____, 2021

Signature: _____

EXHIBIT C

REQUEST FOR EXCLUSION FORM

MELVIN STAKELY JR. vs. WINDSOR PALMS CARE CENTER OF ARTESIA, ET AL.
Los Angeles County Superior Court, Case No. 21STCV1050720

**TO EXCLUDE YOURSELF FROM THE SETTLEMENT, YOU MUST SIGN AND
RETURN THIS FORM, POSTMARKED ON OR BEFORE **INSERT DATE**, 2021, TO
CPT GROUP, INC. AT **INSERT ADDRESS**.**

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):
[ADDRESS LINE 1] _____
[ADDRESS LINE 2] _____
[TELEPHONE NUMBER] _____

**THIS FORM IS TO BE USED ONLY IF YOU DO NOT WANT TO PARTICIPATE IN THE
PROPOSED SETTLEMENT. IF YOU WANT TO RECEIVE A SETTLEMENT PAYMENT, DO
NOT SUBMIT THIS FORM.**

**[] By checking the box to the left, and signing and completing the below, I agree to the following:
I do not want to participate in the settlement in *Melvin Stakely Jr. vs. Windsor Palms Care Center of
Artesia, et al.*, Los Angeles County Superior Court, Case No. 21STCV10507. I understand by not
participating and excluding myself from the settlement, that I will not receive any money from the
settlement.**

Executed on _____, 2021

Signature: _____

EXHIBIT D

DISPUTE FORM

MELVIN STAKELY JR. vs. WINDSOR PALMS CARE CENTER OF ARTESIA, ET AL.
Los Angeles County Superior Court, Case No. 21STCV1050720

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] _____ Former Names (if any): _____
[ADDRESS LINE 1] _____
[ADDRESS LINE 2] _____
[TELEPHONE NUMBER] _____

Your estimated settlement amount (shown below) is based on your workweeks worked during the Class Period. Your estimated settlement amount is a proportion of the total number of workweeks worked by all Class Members.

Class Period:	Covered Period Start Date – Covered Period End Date
Workweeks	«Workweeks»
Estimated Settlement Amount:	«Estimated Amount»

Your actual settlement amount may be higher or lower based on the number of Class Members who opt-out, the Court's rulings related to fees, costs, incentive payments, and other factors. Unless you believe that any information above is inaccurate, you do not need to do anything to receive your settlement amount.

DO NOT fill out the portion below or return this form UNLESS you believe any of the information above is NOT accurate or your address is incorrect. If you would like to dispute the above information, please sign and date the below, and mail it to the Settlement Administrator along with supporting evidence or information on or before **Response Date**.

OPTION TO DISPUTE

☐ I wish to dispute the number of workweeks I worked in the Class Period. I believe that I worked _____ workweeks for Windsor Palms Care Center of Artesia, et al. (or its predecessors) during the Class Period. I have enclosed documentation substantiating my dispute. I understand that by submitting this dispute, the Settlement Administrator will review the Defendant's records and make a determination based on those records and the records I submit.

Sign your name here

Date

Print your name here

Date

YOU MUST MAIL THIS DISPUTE FORM BY _____, 2021 TO THE FOLLOWING ADDRESS OR FAX:

c/o CPT Group, Inc.
