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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

MARTINA E. GONZALEZ, individually and
on behalf of other persons similarly situated
and similarly aggrieved employees,

Plaintiffs,

vs.

FMS MANAGEMENT, an active California
Corporation; and DOES 1 through 10,

Defendants.

CASE NO. 30-2019-01065563-CU-OE-CXC

Assigned for all purposes to the Hon. James J.
Di Cesare Department C16

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

Action Filed: 4/22/2019
FAC Filed: 7/26/2019
SAC Filed: 4/6/2021
Trial Date: None Set

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Martina E.
2 Gonzalez (Collectively referred to as “Plaintiff” or “Class Representative”), on behalf of herself and
3 all others similarly situated to her and as defined below, and FMS Management (“Defendant”), as
4 set forth below:

5 **I. The Conditional Nature of This Stipulation**

6 Defendant and Class Representative enter into this Amended Joint Stipulation of Class
7 Action and PAGA Settlement and Release (“Stipulation,” “Settlement,” or “Settlement
8 Agreement”), including all associated exhibits or attachments, in compromise of dispute claims for
9 the sole purpose of resolving the matters entitled *Martina E. Gonzalez v. FMS Management.*, Orange
10 County Superior Court Case No. 30-2019-01065563-CU-OE-CXC (“Action” or “Litigation”). The
11 Settlement is subject to Court approval. In the event that the Court does not execute and grant Final
12 Approval Order and Judgment, or in the event that the associated Judgment does not become final
13 for any reason, this Stipulation will be deemed null and void, it will be of no force or effect
14 whatsoever, it will not be referred to or used for any purpose whatsoever, and the negotiation, terms
15 and entry of it shall remain subject to the provisions of California Evidence Code §§ 1119 and 1152.

16 Defendant denies all of the claims and allegations asserted in the Litigation (as defined
17 herein). Defendant has agreed to resolve this Litigation via this Stipulation, but to the extent this
18 Stipulation is deemed void or does not take effect, Defendant does not waive, but rather expressly
19 reserves, all rights to challenge all such claims and allegations in the Litigation upon all procedural
20 and factual grounds, including without limitation the ability to challenge suitability for class
21 treatment or representative adjudication on any grounds or to assert any and all defenses or
22 privileges. The Class Representative and her counsel agree that Defendant retains and reserves these
23 rights. In particular, the Class Representative and her counsel waive and agree not to argue or to
24 present any argument that Defendant would be estopped from contesting class certification because
25 it has entered into this Stipulation.

26 **II. The Parties to this Stipulation**

27 This Stipulation (with the associated exhibits) is made and entered into by and among
28 Plaintiff (on behalf of herself and each of the members of the Class) and Defendant (Plaintiff and

1 Defendant shall be referred to collectively as “Parties”). This Stipulation is intended by the Parties
2 to result in a Judgment and to fully, finally, and forever resolve, discharge and settle the Released
3 Claims (defined below) upon and subject to the terms and conditions thereof.

4 **III. Procedural Posture**

5 On April 22, 2019, Plaintiff commenced a class action suit against Defendant by filing her
6 Class Action Complaint in Orange County Superior Court. On July 26, 2019, Plaintiff filed her
7 First Amended Complaint in order to include a claim for PAGA penalties. On April 6, 2021,
8 Plaintiff filed her Second Amended Complaint in order to include a claim for failure to pay vested
9 vacation wages.

10 On October 1, 2020, the Parties participated in mediation before Jeffrey Krivis of First
11 Mediation Corporation. The mediation was a successful, arms-length negotiation, with the Parties
12 agreeing to settle this matter and enter into this Stipulation.

13 **IV. Defendant’s Denial of Wrongdoing or Liability**

14 Defendant denies all of the claims and contentions alleged by the Plaintiff in the Litigation,
15 and has asserted multiple defenses to liability, class certification, and damages. Defendant does not,
16 by this Settlement Agreement or otherwise, admit any liability of wrongdoing of any kind.
17 Nonetheless, Defendant has taken into account the uncertainty and risks inherent in any litigation,
18 particularly class action litigation, and concluded that to continue the Litigation would be protracted
19 and expensive and that it is desirable that the Litigation be fully and finally settled in the manner
20 and upon the terms and conditions set forth in this Stipulation.

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

27 Neither the Settlement, nor any act performed or document executed pursuant to or in
28 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or

1 evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any wrongdoing
2 or liability of the Released Parties (as defined below); or (b) is or may be deemed to be, or may be
3 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the
4 Litigation or in any proceeding in any court, administrative agency or other tribunal; or construed
5 as an admission by Plaintiff regarding the validity of any allegation or claim asserted in this Action
6 or that Plaintiff has waived any allegation or claim asserted in the Action.

7 In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the
8 extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense
9 to, and may be used as the basis for an injunction against, any action, suit or other proceeding that
10 may be instituted, prosecuted or attempted in breach of this Settlement Agreement or the releases
11 contained herein.

12 In light of the above, Defendant has determined that it is desirable and beneficial to it that
13 the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation.

14 **V. Claims of the Class Representative and Benefits of Settlement**

15 The Class Representative believes that the claims asserted in the Litigation have merit. The
16 Class Representative and Class Counsel recognize and acknowledge, however, the expense and time
17 associated with continued litigation against Defendant through class certification, trial, and/or
18 appeals. The Class Representative and Class Counsel have also taken into account the uncertain
19 outcome and risks of any litigation, and in particular putative class actions such as this Litigation,
20 as well as the difficulties and delays inherent in such litigation. The Class Representative and Class
21 Counsel are also mindful of the inherent problems of proof in establishing and overcoming potential
22 defenses to the claims asserted in the Litigation. In light of these considerations, the Class
23 Representative and Class Counsel believe that the Settlement set forth in the Stipulation confers
24 substantial benefits and is in the best interests of the Class.

25 **VI. Terms of Stipulation and Agreement of Settlement**

26 **1. Definitions**

27 As used in all parts of this Stipulation (including the exhibits which are incorporated as part
28 of the Stipulation), the following terms have the meanings specified below:

1 1.1 “Class” or “Class Members” means any and all current and former hourly-paid or
2 non-exempt employees who worked for Defendant within the State of California at any time from
3 January 1, 2017 to the Preliminary Approval Date.

4 1.2 “Class Counsel” means Zorik Mooradian and Haik Hacopian of Mooradian Law,
5 APC, 24007 Ventura Blvd., Suite 210, Calabasas, California 91302.

6 1.3 “Class Period” means the time period from January 1, 2017 to the Preliminary
7 Approval Date.

8 1.4 “Class Representative” means Martina E. Gonzalez.

9 1.5 “Court” means the Superior Court of the State of California, County of Orange.

10 1.6 “Effective Date” means the later of: (a) if no objections to the Settlement are
11 submitted, the date on which the Court issues the Final Approval Order and Judgment; (b) if any
12 objections to the Settlement are submitted, the date which is sixty (60) calendar days after notice of
13 entry of the Final Approval Order and Judgment if no notice is filed within that time seeking appeal
14 of the Final Approval Order and Judgment and if no motion for extension to appeal is filed; or (c)
15 if a notice of appeal is filed, the date upon which all appellate and/or other proceedings resulting
16 from the notice of appeal have been terminated in such a manner as to permit the Final Approval
17 Order and Judgment to take effect in substantially the form described herein.

18 1.7 “Employer Taxes” means Defendant’s share of payroll taxes (e.g. UI, ETT, Social
19 Security, and Medicare taxes) with respect to the wages portion of Individual Settlement Amounts,
20 which will be paid by Defendant separately and in addition to the Gross Settlement Sum.

21 1.8 “Skip Tracing” means the utilization of Accurint or Experian, after the Reasonable
22 Address Verification, to review the accuracy of and, if possible, to update a mailing address for a
23 Class Member in the event that his or his Class Notice is returned to the Settlement Administrator
24 as undeliverable without a forwarding address.

25 1.9 “Gross Settlement Sum” means the total amount of Seven Hundred and Fifty
26 Thousand Dollars and Zero Cents (\$750,000.00) to be paid by Defendant pursuant to the Settlement,
27 which will include: Attorneys’ Fees and Costs, Settlement Administration Fees, Service Payment,
28 LWDA Payment, and the Net Settlement Sum. The Gross Settlement Sum excludes Employer

1 Taxes. The Gross Settlement Sum was based on Defendant's representation that approximately
2 48686.71 Workweeks were at issue as of October 1, 2020.

3 1.10 "Individual Settlement Amount" means an individual Participating Class Member's
4 share of the Net Settlement Sum, which will be allocated as one third wages and two-thirds interest
5 and penalties. Individual Settlement Amounts will be calculated by multiplying the Net Settlement
6 Sum by the Payment Ratio Fraction of each Participating Class Member.

7 1.11 "Individual Settlement Payment" means the net payment of a Participating Class
8 Member's Individual Settlement Amount, after reduction for the applicable taxes, and which does
9 not include any Employer Taxes.

10 1.12 "Last Known Address" means the most recently recorded mailing address for a Class
11 Member, as such information is contained in employment, payroll, or personnel records maintained
12 by Defendant.

13 1.13 "Net Settlement Sum" means the amount that will be available for payment to all
14 Participating Class Members (subject to the occurrence of the Effective Date), and is calculated by
15 subtracting all of the following from the Gross Settlement Sum: (1) attorneys' fees in the amount of
16 up to \$250,000.00 and reimbursement of litigation costs and expenses not to exceed \$14,000.00 to
17 Class Counsel ("Attorneys' Fees and Costs"); (2) service award to Plaintiff Martina E. Gonzalez in
18 the amount of up to \$5,000.00 ("Service Payment"); (3) fees and expenses of administration of the
19 Settlement to the Settlement Administrator in an amount not to exceed Eighteen Thousand Dollars
20 (\$18,000.00) ("Settlement Administration Costs"); and (4) the seventy-five percent (75%) share of
21 PAGA Penalties ("LWDA Payment") in the amount of \$20,000.00 to the California Labor and
22 Workforce Development Agency ("LWDA"). The Net Settlement Sum is currently estimated to be
23 approximately Four Hundred Forty Three Thousand Dollars and Zero Cents (\$443,000.00), subject
24 to Court approval.

25 1.14 "Notice of Class Action Settlement" or "Class Notice(s)" means a notice titled
26 "Notice of Class Action Settlement" to be approved by the Court, substantially in the form attached
27 hereto as "**Exhibit 1.**" The Notice of Class Action Settlement will constitute the class notice
28

1 pursuant to California Rule of Court, Rule 3.769(f). Class Members shall also receive a Spanish
2 translation of the Notice.

3 1.15 “Opt Out” means a Class Member’s excluding him/her or himself/herself from the
4 Settlement, by way of submitting a timely and valid Request for Exclusion Form to the Settlement
5 Administrator, in conformity with the requirements set forth herein and in the Class Notice.

6 1.16 “Final Approval Order and Judgment” means the judgment and order to be entered
7 by the Court, substantially in the form that the parties mutually agree to and lodge with the Court,
8 which will be a judgment for purposes of California Rule of Court, Rule 3.771(a) (“Judgment”) and
9 constitute approval pursuant to California Rule of Court, Rule 3.769(a). The Final Approval Order
10 and Judgment will be posted on the Settlement Administrator’s website for a period of sixty (60)
11 calendar days in compliance with California Rule of Court, Rule 3.771(b).

12 1.17 “PAGA Penalties” means the penalties pursuant to California Labor Code §§ 2698,
13 *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”) in the amount of \$26,666.70 to be paid
14 in settlement of the PAGA claims in the Litigation. PAGA Penalties are to be approved by the Court
15 pursuant to California Labor Code § 2699 and are to be distributed as follows: seventy-five percent
16 (75%), or Twenty Thousand Dollars and Zero Cents (\$20,000.00), to the LWDA (i.e., the LWDA
17 Payment) and twenty-five percent (25%), or Six Thousand Six Hundred Sixty Six Dollars and
18 Seventy Cents (\$6,666.70), to be a part of the Net Settlement Sum that will be distributed to
19 Participating Class Members.

20 1.18 “Participating Class Members” or “Settlement Class” means all Class Members who
21 do not Opt Out pursuant to Paragraph 3.3.4 and, thus, become bound by the Judgment.

22 1.19 “Payment Ratio Fraction” means a fraction that has as its numerator the Participating
23 Class Member’s individual Workweeks and has as its denominator the total aggregate Workweeks
24 of all Participating Class Members.

25 1.20 “Person” means a natural person, corporation, company, partnership, firm,
26 association, or society.

27 1.21 “Preliminary Approval Date” means the date on which the Court grants preliminary
28 approval of the Settlement.

1 1.22 “Preliminary Approval Order” means an order to be executed and filed by the Court,
2 substantially in the form that the parties mutually agree to and lodge with the Court, which will
3 constitute an order certifying a provisional class for settlement purposes only pursuant to California
4 Rule of Court, Rule 3.769(d) and an order setting a Final Approval Hearing pursuant to California
5 Rule of Court, Rule 3.769(e).

6 1.23 “Reasonable Address Verification” means the utilization of the National Change of
7 Address Database maintained by the United States Postal Service to review the accuracy of and, if
8 possible, update a mailing address.

9 1.24 “Released Claims” ” by the Participating Class Members or Settlement Class upon
10 funding of the Settlement by Defendant will include, but are not limited to, all claims, demands,
11 rights, liabilities and causes of action of every nature and description whatsoever including without
12 limitation statutory, constitutional, contractual or common law claims, against the Released Parties
13 (as defined below), and any of them, for relief and penalties, that accrued during the Class Period,
14 and as a result of Class Members’ employment by Defendant in California, that arise under any state
15 or local law or state administrative order that was or could have been pled based on the facts alleged
16 in the Operative Complaint, including claims of failure to pay minimum and overtime wages, failure
17 to provide compliant meal and rest periods and/or associated premiums, failure to provide accurate
18 wage statements, failure to pay wages timely at termination, failure to pay vested vacation wages,
19 unfair competition, PAGA civil penalties pursuant to § 2698, *et seq.* and other related penalties for
20 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 227.3, 510, 512,
21 1194, 1194.2, 1197, 1197.1, 1198, 17200, 2699, the applicable Wage Order of the Industrial Wage
22 Commission, and California Business & Professions Code §§ 17200 to 17208, including without
23 limitation all related claims for restitution and other equitable relief arising from California Business
24 and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys’ fees or
25 litigation costs, and any other related claims and/or penalties, including civil penalties. The release
26 does not extend to any claims not alleged in the Operative Complaint and specifically excludes
27 claims for workers’ compensation, personal injuries, unemployment insurance, state disability
28 compensation, claims under the Employment Retirement Income Security Act of 1974, previously

1 vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination,
2 retaliation, and harassment including but not limited to those arising under the Age Discrimination
3 In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil
4 Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the
5 California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy
6 Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the
7 Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or
8 regulation concerning discrimination, retaliation and/or harassment.

9 1.25 “Released Parties” means Defendant FMS Management, and each of its parent
10 companies, subsidiaries, affiliates, current and former management companies, shareholders,
11 members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and
12 any past, present or future officers, directors and employees) predecessors, successors, and assigns.

13 1.26 “Response Deadline” means the date that is sixty (60) calendar days after the date on
14 which the Settlement Administrator initially mails the Class Notice to the Class Members, which
15 will be the deadline for a Class Member to Opt Out, dispute the number of Workweeks credited to
16 him or her, and/or object to the Settlement, and which will be indicated on the Class Notice that is
17 mailed to the Class Members.

18 1.27 “Request for Exclusion Form” means the form attached hereto as **Exhibit “2”**, or
19 any writing that qualifies as a request to opt-out pursuant to this Settlement, submitted to the
20 Settlement Administrator by mail, postmarked on or before the Response Deadline, and which must
21 contain the case name (*Martina E. Gonzalez v. FMS Management*, Orange County Superior Court
22 Case No. 30-2019-01065563-CU-OE-CXC), as well as the Class Member’s full name, address,
23 telephone number, last four (4) digits of his or his Social Security number, and signature, and a clear
24 statement indicating that he or she seeks to exclude him or himself from the Settlement.

25 1.28 “Settlement Administrator” means the third-party settlement administration firm,
26 CPT Group, Inc.

27 1.29 “Final Approval Hearing” means a hearing set by the Court for the purpose of
28 determining the fairness, adequacy and reasonableness of the Settlement pursuant to class action

1 procedures and requirements and entering Judgment, and required under California Rule of Court,
2 Rule 3.769(a).

3 1.30 “Unknown Claims” means any Released Claims which the Class Representative does
4 not know or suspect to exist in their favor at the time of the entry of the Judgment, and which if
5 known might have affected their settlement with and release of Defendant.

6 1.31 “Updated Address” means a mailing address that was updated via a Reasonable
7 Address Verification, via an updated mailing address provided by the United States Postal Service
8 or a Class Member, via Skip Tracing, or via a Locator Service.

9 1.32 “Workweeks” means the numbers of workweeks worked by the Class Members as
10 hourly-paid or non-exempt employees for Defendant from January 1, 2017 to the Preliminary
11 Approval Date.

12 1.33 “Objection Form” means the form attached hereto as **Exhibit “3”**, or any writing that
13 qualifies as an objection pursuant to this Settlement, submitted to the Settlement Administrator by
14 mail, postmarked on or before the Response Deadline, and which must contain the case name
15 (*Martina E. Gonzalez v. FMS Management*, Orange County Superior Court Case No. 30-2019-
16 01065563-CU-OE-CXC), the Class Member’s full name, address, telephone number, last four (4)
17 digits of his or her Social Security number, signature, dates of employment as a non-exempt or
18 hourly-paid employee of Defendant in California, all legal and factual bases for objection to the
19 Settlement, whether the Class Member intends to appear at the Final Approval Hearing, and whether
20 the Class Member is represented by legal counsel (and if so, identifying the legal counsel and
21 providing said legal counsel’s mailing address).

22 **Settlement Amount, Timing of Payments, Tax Reporting Obligations, and Other**
23 **Obligations of Defendant and the Settlement Administrator**

24 2.1 Subject to the Court finally approving the Settlement, Defendant will fund the total
25 Gross Settlement Sum, along with the Employer Taxes (which will be paid by Defendant separately
26 and in addition to the Gross Settlement Sum). If the Court does not grant either preliminary approval
27 or final approval of this settlement, Defendant will be excused from making the settlement payment.

1 The maximum amount Defendant can be required to pay under this Settlement for any purpose is
2 the Gross Settlement Sum.

3 2.2 The Settlement Administrator will administer the Settlement and perform any
4 function related to settlement administration at the agreed-upon instruction of both Class Counsel
5 and Defendant, including, and not limited to, establishing and maintaining a settlement website and
6 toll-free telephone line for Class Members to call with inquiries regarding the Settlement,
7 distributing the Class Notice, performing skip traces with respect to Class Notices that are returned
8 as undeliverable and without a forwarding address on or before the Response Deadline, receiving
9 and processing Requests for Exclusion and objections to the Settlement, adjudicating Class
10 Members' disputes regarding Workweeks, providing Class Counsel and counsel for Defendant with
11 weekly updates on the status of the settlement administration process (including the names and
12 percentages of Class Members who Opt Out or object), calculating and handling inquiries regarding
13 the calculation of the Individual Settlement Amounts, preparing a declaration to submit to the Court
14 that details the settlement notice administration process and identifies each Class Member who Opts
15 Out, distributing the Gross Settlement Sum, and preparing any tax returns and any other filings
16 required by any governmental taxing authority or agency. The actions of the Settlement
17 Administrator will be governed by the terms of this Stipulation. The Parties, through their counsel,
18 may provide written information needed by the Settlement Administrator pursuant to the
19 Stipulation.

20 2.3 The Parties agree to cooperate in good faith and to coordinate with each other and
21 the Settlement Administrator to carry out the terms of the Settlement, including, without limitation,
22 by providing reasonably available information regarding Class Members.

23 2.4 Defendant, through the Settlement Administrator, will distribute payments as
24 follows: (1) Settlement Administrator will pay the Class Representative/Named Plaintiff Service
25 Award, as described in subsection (a) below, of up to \$5,000.00 for Plaintiff Martina E. Gonzalez
26 for her effort and work in prosecuting the Action on behalf of Class Members and Aggrieved
27 Employees; (2) Class Counsel will be paid their Attorneys' Fees and costs in the amount of
28 \$250,000.00 and actual costs up to \$14,000.00, as described in subsection (b) below; (3) the

1 Settlement Administrator will disburse the settlement administration fee, as described in subsection
2 (c) below, of up to \$18,000.00; (4) as soon as the Settlement Administrator receives payment from
3 Defendant, the Settlement Administrator will disburse \$20,000.00 to the LWDA for PAGA
4 Penalties, which represents the seventy-five percent (75%) share of the \$26,666.70 portion of the
5 Gross Settlement Sum allocated to PAGA and payable to the LWDA pursuant to *Labor Code* section
6 2699, *et seq.*; (5) distributions to eligible Settlement Class Members who have not submitted a valid
7 and timely Request for Exclusion Form, including any Class Member whose notice was returned as
8 undeliverable, on a pro rata basis.

9 (a) Named Plaintiff's Service Award: Subject to Court approval, the Named Plaintiff
10 and Class Representative shall receive a service award as follows: \$5,000.00 for Martina E.
11 Gonzalez. Defendant agrees not to oppose the amount of the Named Plaintiff's and Class
12 Representative's service award. Since it is the intent of the Parties that the service award to the
13 Named Plaintiff and Class Representative is for her service to the Class Members, and not wages,
14 the Settlement Administrator will not withhold any taxes from the service award. The Settlement
15 Administrator will report the service award on a Form 1099, which it will provide to the Named
16 Plaintiff and Class Representative and to the pertinent taxing authorities.

17 (b) Attorneys' Fees and Litigation Costs: Class Counsel shall submit their Application
18 for Award of Attorneys' Fees and Costs to the Court before the Final Approval Hearing. Class
19 Counsel will seek attorneys' fees and costs in the amount of \$250,000.00, and actual costs up to
20 \$14,000.00, subject to court approval. Class Counsel shall serve Defendant with copies of all
21 documents in support of their Application for Award of Attorneys' Fees and Costs. Defendant
22 agrees not to oppose the Application for Award of Attorneys' Fees and Costs. The Settlement
23 Administrator will report the attorneys' fees and costs award on a Form 1099, which it will provide
24 to Class Counsel and to the pertinent taxing authorities.

25 (c) Settlement Administration Fees: Subject to Court approval, the Settlement
26 Administrator shall be paid an amount which is expected not to exceed Eighteen Thousand Dollars
27 and Zero Cents (\$18,000.00) for all fees and costs relating to the administration of this settlement,
28 all tax document preparation, custodial fees and accounting fees, all costs and fees associated with

1 preparing, issuing, and mailing any and all Class Notices, all costs and fees associated with
2 computing, reviewing, and paying distributions from the Gross Settlement Sum, all costs and fees
3 associated with preparing any tax returns and any other filings required by any governmental
4 taxing authority or agency, all costs and fees associated with preparing any other notices, reports,
5 or filings to be prepared in the course of administering disbursements from the Gross Settlement
6 Sum, and any other costs and fees incurred and/or charged by the Settlement Administrator in
7 connection with the execution of its duties under this Stipulation.

8 2.5 No later than twenty-one (21) calendar days after the Effective Date Defendant
9 shall deposit the Gross Settlement Sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00)
10 needed to pay the entire Gross Settlement Sum by wiring the funds into a qualified settlement
11 account set up and controlled by the Settlement Administrator. Within fourteen (14) calendar days
12 after the funding of the settlement, the Settlement Administrator shall calculate and pay all
13 payments due under the Settlement Agreement, including the Individual Settlement Amount, the
14 Class Representative's Award, the Administration Fees, the PAGA payment and Attorneys' Fees
15 and Costs. The Settlement Administrator shall pay each Participating Class Member their
16 Individual Settlement Amount according to the terms, conditions and procedures set forth in
17 Paragraph 2.6 of this Stipulation. Each of the payments to Participating Class Members will be
18 inclusive of interest and penalties, including PAGA and wage statement penalties, and will be
19 allocated as follows: one third to satisfaction of claims for unpaid wages; two-thirds to the
20 satisfaction of claims for interest and penalties. All settlement payments for wages shall be
21 subject to required withholdings and deductions as W-2 wage payments. With regard to payments
22 in settlement of claims for penalties and interest, these payments shall be issued through a 1099
23 form and not subject to withholdings or deductions.

24 2.6 The Settlement Administrator shall compute the Individual Settlement Amount for
25 the Participating Class Members as follows:

26 (a) The payment of the Individual Settlement Amounts will be calculated by using the
27 formula set forth in Paragraph 1.10.

1 (b) The Parties agree that the above-described formula and distribution methods are
2 reasonable and fair in light of the Parties' investigation of the claims of the Class, and the relative
3 degree of uncertainty, risk of outcome of further litigation, and difficulties and delays inherent in
4 such litigation of these claims.

5 2.7 Defendant, through the Settlement Administrator, will report each payment made on
6 the Gross Settlement Sum to government authorities including the Internal Revenue Service as
7 required by law, and it shall make all required deductions and/or withholdings. Defendant, through
8 the Settlement Administrator, shall report payments for penalties and interest to the Internal
9 Revenue Service (and other relevant governmental agencies) as non-wage income in the year of
10 payment on a Form 1099, or similar form issued to the Participating Class Members in question.

11 2.8 To the extent that there are excess funds from uncashed checks or Class Members
12 who cannot be located, the parties agree that such funds will escheat to the State of California's
13 Unclaimed Property Fund in the name of the Class Member 180 days after the checks have been
14 mailed to the Class Members.

15 **3. Procedure for Approval and Implementation of Settlement**

16 **3.1 Preliminary Approval**

17 3.1.1 The Class Representative, through her counsel of record, will file an unopposed
18 motion for preliminary approval of Settlement, seeking an order approving the Settlement pursuant
19 to the California Rule of Court, Rule 3.769(e), and this Stipulation will be filed with the Court
20 contemporaneously and/or as part of the motion. By way of the motion, the Class Representative
21 will request that the Court enter a Preliminary Approval Order, approving the distribution of the
22 Class Notice and scheduling the Final Approval Hearing (pursuant to California Rule of Court, Rule
23 3.769(e)) for the purposes of determining whether to grant final approval of the Settlement and enter
24 Judgment in conformity with California Rule of Court, Rule 3.769(h). The motion for preliminary
25 approval of Settlement will be filed after receipt of the fully executed Stipulation by Class Counsel.

26 3.1.2 The Settlement will be void if the Court categorically refuses to enter the Preliminary
27 Approval Order in its entirety or in a substantially similar form; however, the Parties are to take all
28 reasonable steps to cure any non-material issues so as to avoid the Settlement being void. A material

1 deficiency would be any failure by the Court to approve any of the bargained-for terms as set forth
2 in the term sheet signed by the parties on or about October 1- October 14, 2020.

3 **3.2 Notice to Class Members**

4 3.2.1 No later than thirty (30) calendar days after the Preliminary Approval Date, the
5 Settlement Administrator will mail the Court-approved Class Notice to all Class Members. The
6 Class Notice mailed to Class Members will be accompanied by a Spanish language translation of
7 same. The Class Notice will be mailed via first class mail through the United States Postal Service.
8 The envelope containing the Class Notice will bear the following phrase in bold type, ¼ inch below
9 the return address or ¼ inch above the addressee's address: RETURN SERVICE REQUESTED.
10 The envelope will also bear the following phrase in the bottom left hand corner: IMPORTANT –
11 FMS MANAGEMENT CLASS ACTION SETTLEMENT INFORMATION. PLEASE OPEN
12 IMMEDIATELY. The Class Notice and its envelope or covering will be marked to denote the
13 return address of the Settlement Administrator as set forth in the Class Notice.

14 3.2.2 Defendant will prepare a list, in an electronically usable format for the Settlement
15 Administrator, containing for each Class Member, to the extent Defendant has such information, the
16 following: the full name, Last Known Address, dates of employment as a non-exempt or hourly-
17 paid employee of Defendant from January 1, 2017 to the Preliminary Approval Date ("Class List").
18 By granting preliminary approval of the Settlement, the Court will be deemed to have authorized
19 Defendant to provide the Settlement Administrator with the Class List. Defendant will provide the
20 Class List to the Settlement Administrator and Class Counsel within twenty (20) calendar days
21 following the Preliminary Approval Date.

22 3.2.3 For Class Members who were employees of Defendant as of the Preliminary
23 Approval Date, the Settlement Administrator will mail the Class Notice to the Last Known Address
24 provided by Defendant. No Reasonable Address Verification will be conducted for Class Members
25 who were employed by Defendant as of the Preliminary Approval Date.

26 3.2.4 For Class Members who were not employed by Defendant as of the Preliminary
27 Approval Date, prior to mailing the Class Notice, the Settlement Administrator will undertake a
28 Reasonable Address Verification to ascertain the accuracy of the Last Known Address of the Class

1 Member. To the extent this process yields an Updated Address, that Updated Address will be treated
2 as the Last Known Address for purposes of this Stipulation and for Class Notice mailing.

3 3.2.5 If a Class Member is known to be deceased, the Class Notice for that deceased Class
4 Member will be mailed to the Last Known Address (or Updated Address, if applicable) of the legal
5 representative of the deceased Class Member's estate, to the extent known; otherwise, it will be
6 mailed to the Last Known Address (or Updated Address, if applicable) of the deceased Class
7 Member.

8 3.2.6 Unless the Settlement Administrator receives a Class Notice returned from the
9 United States Postal Service for reasons discussed below in this paragraph, on or before the
10 Response Deadline, that Class Notice will be deemed to have been mailed and received by the Class
11 Member to whom it was sent five (5) calendar days after the mailing. In the event that subsequent
12 to the first mailing of a Class Notice and on or before the Response Deadline, the Class Notice is
13 returned to the Settlement Administrator by the United States Postal Service without a forwarding
14 address, the Settlement Administrator will undertake a Skip Tracing on the Class Member to attempt
15 to ascertain the current address of the Class Member, and if such an address is ascertained, the
16 Settlement Administrator will undertake a single re-mailing of the Class Notice to any Updated
17 Address that is located for the Class Member, within three (3) business days of receipt of the returned
18 Class Notice, and the Class Notice will be deemed mailed and received at that point. In the event
19 that subsequent to the initial mailing of a Class Notice and on or before the Response Deadline, the
20 Class Notice is returned to the Settlement Administrator by the United States Postal Service with a
21 forwarding address for the Class Member, the forwarding address will be deemed the Updated
22 Address for the Class Member, the Settlement Administrator will undertake a single re-mailing of
23 the Class Notice to the Updated Address within three (3) business days of receipt of the returned
24 Class Notice, and the Class Notice will be deemed mailed and received at that point. The Settlement
25 Administrator will include a cover letter with any re-mailing to inform the Class Member that the
26 Class Notice was re-mailed and that he or she has the later of the Response Deadline or ten (10)
27 calendar days from the date on which the Class Notice was re-mailed (which shall be the date the
28 re-mailing of the Class Notice is postmarked) to Opt Out, object to the Settlement, and/or dispute

1 the number of Workweeks credited to him or her. Compliance with the procedures described in this
2 paragraph will constitute due and sufficient notice to Class Members of this Settlement and of the
3 Final Approval Hearing, and will satisfy the requirements of due process. Nothing else will be
4 required of or done by the Parties, Class Counsel, counsel for Defendant, or the Settlement
5 Administrator to provide notice of the Settlement and the Final Approval Hearing.

6 3.2.7 No later than seven (7) calendar days after the Response Deadline, the Settlement
7 Administrator will provide Class Counsel and counsel for Defendant with a declaration attesting to
8 completion of the notice process, including any attempts to obtain Updated Addresses for, and the
9 re-sending of, any returned Class Notices, to be filed with the Court by Class Counsel.

10 3.3 Responses to the Notice of Class Action Settlement

11 3.3.1 Disputing Workweeks: If a Class Member disagrees with the number of Workweeks
12 credited to him or his as set forth in his or his Class Notice, he or she must submit a written dispute
13 along with documentation that supports his or his belief that he or she should be credited with a
14 different number of Workweeks. The dispute must be submitted to the Settlement Administrator by
15 mail, postmarked on or before the Response Deadline. The dispute must contain the case name and
16 number of the Action (*Martina E. Gonzalez v. FMS Management.*, Orange County Superior Court
17 Case No. 30-2019-01065563-CU-OE-CXC), as well as the Class Member's name, address,
18 telephone number, last four (4) digits of his or his Social Security number, and signature. The dispute
19 must also contain a clear statement indicating that the Class Member disputes the number of
20 Workweeks credited to him or her. The Settlement Administrator will review the Workweeks
21 dispute and supporting documentation and make a determination based upon the submitted
22 documentation as to the validity of the Class Member's claim. If the Settlement Administrator needs
23 further information from Defendant concerning the Class Member's claim, the Settlement
24 Administrator will notify Defendant and Class Counsel and request the needed information.
25 Defendant's records will be presumed determinative if there is a dispute over the dates of
26 employment that the Class Member worked as a non-exempt or hourly-paid employee in California,
27 unless the Class Member has submitted valid and compelling documentation to support his or his
28 claim to a different number of Workweeks than the number shown on the Class Notice. The

1 Settlement Administrator will attempt to resolve all disputes by applying the above standard. To the
2 extent the Settlement Administrator is unable to resolve the dispute, the dispute will be submitted
3 to the Court by Parties for final resolution at Final Approval.

4 3.3.2 Entry of Appearance at Class Members' Own Expense: Pursuant to California Rule
5 of Court, Rule 3.766(d)(5), any Class Member who does not Opt Out may, if the Class Member so
6 desires, enter an appearance through counsel at his or his own expense, and will be advised of this
7 by way of the Class Notice. Class Members who choose to enter such an appearance are responsible
8 for any attorneys' fees or costs incurred as a result thereof.

9 3.3.3 Objections to Settlement: Class Members who do not Opt Out may object to the
10 Settlement by submitting a written objection to the Settlement to the Settlement Administrator,
11 postmarked no later than the Response Deadline. A written objection to the Settlement must be
12 signed by the Class Member and dated, and additionally state the Class Member's name, last four
13 (4) digits of his or his Social Security number, dates of employment as a non-exempt or hourly-paid
14 employee of Defendant in California, the case name and number of the Action (*Martina E. Gonzalez*
15 *v. FMS Management*, Orange County Superior Court Case No. 30-2019-01065563-CU-OE-CXC),
16 all legal and factual bases for objection to the Settlement, whether the Class Member intends to
17 appear at the Final Approval Hearing, and whether the Class Member is represented by legal counsel
18 (and if so, identifying the legal counsel and providing said legal counsel's mailing address). A Class
19 Member who objects to the Settlement will still be considered a Participating Class Member who is
20 subject to the Settlement.

21 3.3.4 Opting Out of Settlement: Class Members may elect to Opt Out of the Settlement
22 and, thus, exclude themselves from the Settlement. Class Members who wish to exercise this option
23 must submit a timely and valid Request for Exclusion Form to the Settlement Administrator,
24 postmarked on or before the Response Deadline, in accordance with Paragraph 3.2.6. If a valid
25 Request for Exclusion Form is not received by the Settlement Administrator from a Class Member
26 on or before the Response Deadline, then that Class Member will be deemed to have forever waived
27 his or his right to Opt Out. The Class Notice will advise Class Members of their option to Opt Out
28 and will contain instructions on how to do so. Class Members who do not Opt Out by submitting

1 valid and timely Requests for Exclusion will be deemed to be Participating Class Members, will be
2 bound by the Settlement and the Judgment entered based thereon. Class Members who Opt Out by
3 submitting valid and timely Requests for Exclusion will not be bound by the Settlement, will not be
4 entitled to any benefits thereunder, or to make any objection to the Settlement.

5 3.3.5 If a Class Member submits both a Request for Exclusion Form and an Objection
6 Form to the Settlement, the Request for Exclusion Form will be accepted and the Objection Form
7 will be disregarded.

8 3.3.6 The Parties agree that the Response Deadline will not be extended, and no untimely
9 submissions will be honored, under any circumstances, unless mutually agreeable by the Parties
10 and/or except to the extent permitted under Paragraph 3.2.6.

11 3.4 Final Approval Hearing.

12 3.4.1 After the Response Deadline, a Final Approval Hearing will be held before the Court
13 in order to: (1) determine whether the Court should grant final approval of the Settlement; (2)
14 consider objections to the Settlement; and (3) consider Class Representative's application for an
15 award of Attorneys' Fees and Costs to Class Counsel and the Service Payment to the Class
16 Representative. At the Final Approval Hearing, the Parties will request that the Court grant final
17 approval of the Settlement and enter the Final Approval Order and Judgment. The Parties will take
18 all reasonable efforts to secure entry of the Final Approval Order and Judgment. If the Court rejects
19 the Stipulation, fails to enter the Final Approval Order and Judgment, this Stipulation will be void,
20 and Defendant will have no obligation to make any payments under the Settlement, other than the
21 Settlement Administration Costs; however, the Parties and their counsel agree to make all
22 reasonable efforts to fix any issues that the Court cites for its non-approval as set forth in Paragraph
23 3.1.2.

24 3.5 Releases

25 3.5.1 Release by Participating Class Members. Upon funding of the Settlement by
26 Defendant, each of the Participating Class Members (including the Class Representative) will be
27 deemed to have, and by operation of the Judgment will have fully, finally, and forever released,
28 relinquished and discharged Defendant and the Released Parties from any and all Released Claims.

1 3.5.2 Class Representative's General Release of Claims

2 i. In addition to those releases set forth in Paragraph 3.5.1 hereof, with respect to any
3 and all Released Claims, upon the Effective Date, the Class Representative will expressly and will
4 be deemed to have, and by operation of the Judgment will have, waived the provisions, rights and
5 benefits of California Civil Code § 1542 with respect to the Released Claims, which provides as
6 follows:

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

12 ii. In consideration for the Service Payment and as an inducement for Defendant to enter
13 into this Stipulation, with respect to the Class Representative only, the Released Claims will
14 additionally include any and all claims including Unknown Claims against Defendant that accrued
15 during the Class Period, but does not include claims for: age discrimination under the Age
16 Discrimination In Employment Act, unemployment insurance, workers' compensation benefits,
17 state disability compensation, previously vested benefits under any Employer-sponsored benefits
18 plan or claims under the Employment Retirement Income Security Act of 1974.

19 iii. Any Class Representative(s) may hereafter discover facts in addition to or different
20 from those which he or she now knows or believes to be true with respect to the subject matter of
21 the Released Claims, but any such Class Representative(s), upon the Effective Date, will be deemed
22 to have, and by operation of the Judgment will have fully, finally, and forever settled and released
23 any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-
24 contingent, whether or not concealed or hidden, which then exist, or previously have existed upon
25 any theory of law or equity now existing or coming into existence in the future, including, but not
26 limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty,
27 law or rule, without regard to the subsequent discovery or existence of such different or additional
28 facts. The Class Representative acknowledges that the foregoing waiver was separately bargained
for and a key element of the Settlement of which this release is a part. Notwithstanding any other

1 provision of this Stipulation, the Parties recognize that because the only Unknown Claims released
2 by this Stipulation are those Unknown Claims that meet the definition of Released Claims, the
3 release effectuated by this Stipulation will not extend to Unknown Claims other than those described
4 in Paragraph 1.30 above.

5 **3.6 Termination of Settlement; Reasonable Steps to Cure.**

6 3.6.1 In the event that the Settlement is not be approved in its entirety by the Court, or in
7 the event that the Effective Date does not occur, Defendant will have the option to void the
8 Settlement, and in such case, no payments will be made by Defendant to anyone, other than the cost
9 of administration, in accordance with the terms of this Stipulation, and this Stipulation will be
10 deemed null and void with no effect on the Litigation whatsoever. Notwithstanding this provision,
11 the Parties agree to take all reasonable steps to cure any issues cited by the Court as reason for non-
12 approval of any matter(s) filed with the Court for preliminary and final approval. In the event that
13 more than twenty five (25) of the Class Members Opt Out by submitting timely and valid Requests
14 for Exclusion to the Settlement Administrator by the Response Deadline, Defendant will have the
15 right to terminate and void this Settlement; however, Defendant must notify Class Counsel, of its
16 intention to nullify the Settlement in writing by certified mail to Zorik Mooradian and Haik
17 Hacopian of Mooradian Law, APC, 24007 Ventura Blvd., Suite 210, Calabasas, California 91302,
18 within two (2) weeks after the expiration of the Response Deadline.

19 3.6.2 The Settlement is based on Defendant's representation that approximately 48686.71
20 Workweeks are at issue as of October 1, 2020.

21 **3.7 Miscellaneous Provisions.**

22 3.7.1 No Person will have any claim against Class Counsel, the Settlement Administrator,
23 or any of the Released Parties based on the payments made or other actions taken substantially in
24 accordance with the Settlement or further orders of the Court.

25 3.7.2 In the event that the Settlement is not substantially approved by the Court, after all
26 reasonable steps to cure have been exhausted, or the Settlement is terminated, cancelled, declared
27 void, or fails to become effective in accordance with its terms, or if the Judgment does not become
28 final, or to the extent cancellation is otherwise provided for in this Stipulation, the Parties will

1 resume the Litigation at that time as if no Stipulation had been entered. In such event, the terms and
2 provisions of the Stipulation will have no further force and effect with respect to the Parties and will
3 not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order
4 entered by the Court in accordance with the terms of the Stipulation will be treated as vacated.
5 Notwithstanding any other provision of this Stipulation, if the Court should fail to award attorneys'
6 fees to Class Counsel in the full amount provided for in this Stipulation, no order of the Court or
7 modification of any order of the Court concerning the amount of any attorneys' fees to be paid by
8 Defendant to Class Counsel pursuant to this Settlement will constitute grounds for cancellation or
9 termination of the Stipulation or grounds for limiting any other provision of the Judgment. It is
10 agreed that no order of the Court, including any order concerning attorneys' fees, may alter or
11 otherwise increase the Gross Settlement Sum.

12 3.7.3 The Parties (a) acknowledge that it is their intent to consummate this agreement; (b)
13 agree to cooperate to effectuate and implement all terms and conditions of the Stipulation and to
14 exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation; (c)
15 agree to seek and to attempt to obtain preliminary and final approval by Court of the Settlement;
16 and (d) agree to reasonably work together to seek and attempt to obtain preliminary and final
17 approval of the Stipulation should the Court not grant approval upon the first presentation.

18 3.7.4 The Parties and attorneys agree to keep the Settlement confidential until the motion
19 for preliminary approval of the Settlement is filed. Thereafter, the Parties will agree to make no
20 comments to the media or otherwise publicize the terms of the Settlement.

21 3.7.5 The Parties agree that they will not engage in making or publishing written
22 statements which are disparaging to the reputation of the other or their corporate parents and
23 affiliates.

24 3.7.6 The Stipulation compromises claims which were contested and the subject of a good
25 faith dispute, and it will not be deemed an admission by any of the Parties as to the merits of any
26 claim or defense. The Parties agree that the amounts paid in settlement of the Litigation and the
27 other terms of the Settlement were negotiated at arms-length and in good faith with sufficient
28 information by the Parties and reflect a settlement that was reached voluntarily after consultation

1 with competent legal counsel.

2 3.7.7 All of the exhibits to the Stipulation and material and integral parts hereof and are
3 fully incorporated herein by this reference.

4 3.7.8 The Stipulation may be amended or modified only by a written instrument signed by
5 or on behalf of all Parties or their respective counsel, subject to approval by the Court.

6 3.7.9 The Stipulation constitutes the entire agreement among the Parties hereto and no
7 representations, warranties or inducements have been made to any party concerning the Stipulation
8 or its exhibits other than the representations, warranties and covenants contained and memorialized
9 in such documents. Except as otherwise provided herein, each party will bear its own costs.

10 3.7.10 The Parties understand and acknowledge that: (a) they have performed an
11 independent investigation of the allegations of fact and law made in connection with this Litigation;
12 and (b) even if they may hereafter discover facts in addition to, or different from, those that they
13 now know or believe to be true with respect to the subject matter of the Litigation as reflected in
14 this Settlement Agreement, that will not affect or in any respect limit the binding nature of this
15 Settlement Agreement. It is the Parties' intention to resolve their disputes in connection with this
16 Litigation pursuant to the terms of this Settlement Agreement and thus, in furtherance of their
17 intentions, the Settlement Agreement will remain in full force and effect notwithstanding the
18 discovery of any additional facts or law, or changes in law, and this Settlement will not be subject
19 to rescission or modification by reason of any changes or differences in facts or law, subsequently
20 occurring or otherwise.

21 3.7.11 Class Counsel, on behalf of the Class Members, is expressly authorized by the Class
22 Representative to take all appropriate action required or permitted to be taken by the Class pursuant
23 to the Stipulation to affect its terms and also expressly authorized to enter into any modifications or
24 amendments to the Stipulation.

25 3.7.12 Each counsel or other Person executing the Stipulation or any of its exhibits on behalf
26 of any Parties hereby warrants that such Person has full and express authority to do so.

27 3.7.13 The Stipulation may be executed in one or more counterparts. All executed
28 counterparts and each of them will be deemed to be one and the same instrument. A complete set of

1 executed counterparts will be filed with the Court.

2 3.7.14 The Stipulation will be binding upon, and inure to the benefit of, the successors and
3 assigns of the parties hereto; however, this Stipulation is not designed to and does not create any
4 third-party beneficiaries unless otherwise specifically provided herein.

5 3.7.15 The Court will retain jurisdiction with respect to implementation and enforcement of
6 the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes
7 of implementing and enforcing the Settlement embodied in the Stipulation, in conformity with
8 California Rules of Court, Rule 3.769 and California Civil Procedure Code section 664.6.

9 3.7.16 The Stipulation and the exhibits hereto will be considered to have been negotiated,
10 executed and delivered, and to have been wholly performed, in the State of California, and the rights
11 and obligations of the parties to the Stipulation will be construed and enforced in accordance with,
12 and governed by, the internal, substantive laws of the State of California without regard to principles
13 of conflicts of law.

14 3.7.17 The language of all parts of this Stipulation will in all cases be construed as a whole,
15 according to its fair meaning, and not strictly for or against either party. No party will be deemed
16 the drafter of this Stipulation. The Parties acknowledge that the terms of the Stipulation are
17 contractual and are the product of negotiations between the parties and their counsel. Each party
18 and their/its counsel cooperated in the drafting and preparation of the Stipulation. In any
19 construction to be made of the Stipulation, the Stipulation will not be construed against any party
20 and the canon of contract interpretation set forth in California Civil Code § 1654 will not be applied.

21 3.7.18 Should any deadlines set forth in the Stipulation require any action to be taken on a
22 weekend or a Court holiday, then the action may be taken on the next business day, unless otherwise
23 specified by law or rule of Court, except that should the Response Deadline (or extension(s) thereof
24 specified in the Stipulation relating to a deficiency notice or a re-mailing) fall on a Saturday and
25 regular U.S. Mail service is in operation that day, then no further extension pursuant to this
26 paragraph will apply to these specific deadlines.

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DATED: 7, 1, 21

By: Martina Elias Gonzalez
Plaintiff Martina E. Gonzalez

DATED:

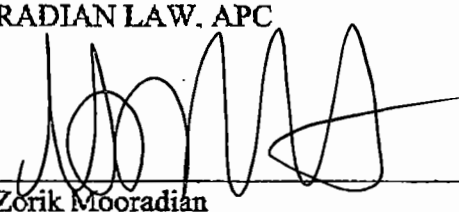
By: _____
Marisol Sanchez
FMS Management

DATED:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____
Katherine C. Den Bleyker
Attorneys for Defendant, FMS Management

DATED: July 6, 2021

MOORADIAN LAW, APC
By: 
Zorik Mooradian
Haik Hacopian
Attorneys for Plaintiff, Martina E. Gonzalez

LEWIS
BRISBOIS

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DATED:

By:

Plaintiff Martina E. Gonzalez

DATED:

By:


Marisol Alvarez (Jul 2, 2021 19:20 PDT)

Marisol Sanchez

FMS Management

DATED: July 6, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:



Katherine C. Den Bleyker
Attorneys for Defendant, FMS Management

DATED:

MOORADIAN LAW, APC

By:

Zorik Mooradian
Haik Hacopian
Attorneys for Plaintiff, Martina E. Gonzalez

NOTICE OF CLASS ACTION SETTLEMENT

*Martina E. Gonzalez v. FMS Management,
Orange County Superior Court Case No.30-2019-01065563-CU-OE-CXC*

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because you have been identified as an hourly-paid, or non-exempt, employee of Defendant FMS Management who worked at one (or more) of five (5) McDonald's restaurants at some point during the period from January 1, 2017 through the Preliminary Approval Date. As such, you may be eligible to take part in the class action settlement reached in the above-referenced matter.

The locations and numbers of the McDonald's restaurants covered by this Settlement are as follows:

31822 Del Obispo St, San Juan Capistrano, California 92675 (#2615 San Juan)

12510 Poway Road, Poway, California, 92064 (#3187 Poway)

10655 Scripps Poway Parkway, San Diego, California 92131 (#18014 Scripps Poway)

2482 Northside Drive, San Diego, California, 92108 (#24113 Friars)

16440 Bernardo Center Drive, San Diego, California 92128 (#36374 Rancho Bernardo)

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement. You have not been sued.

By order of the Superior Court of California for the County of Orange (the "Court" or "Orange County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between Martina E. Gonzalez ("Plaintiff") and Defendant FMS Management ("Defendant") (collectively "the Parties"), was granted on **[Preliminary Approval Date]**, in the case entitled *Martina E. Gonzalez v. FMS Management*, Orange County Superior Court Case No. 30-2019-01065563-CU-OE-CXC ("Action"), which may affect your legal rights.

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the settlement (in which case you will not receive payment under the settlement), object to the settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

I. IMPORTANT DEFINITIONS

"Class" means any and all current and former hourly-paid or non-exempt employees who worked for Defendant within the State of California at any time from January 1, 2017 to the Preliminary Approval Date.

"Class Member" means a member of the Class.

"Class Period" means the time period from January 1, 2017 to the Preliminary Approval Date.

II. BACKGROUND OF THE ACTION

On April 22, 2019, Plaintiff commenced a class action suit against Defendant by filing her Class Action Complaint in Orange County Superior Court. On July 26, 2019, Plaintiff filed her First Amended Complaint in order to include a claim for PAGA penalties. On April 6, 2021, Plaintiff filed her Second Amended Complaint in order to include a claim for failure to pay vested vacation wages. On [DATE], Plaintiff filed her Third Amended Complaint.

Plaintiff alleged that Defendant violated the California Labor Code and California Business and Professions Code with respect to herself and the Class Members by, *inter alia*, failing to properly pay for all hours worked, including minimum and overtime wages, failing to provide legally-compliant meal and rest periods or premium pay in lieu thereof, failing to provide accurate wage statements, and waiting time penalties, failing to pay vested vacation wages, and engaging in unfair

business practices and owing penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).

Collectively, Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, restitution, declaratory relief, penalties, interest, and attorneys’ fees and costs.

Defendant denies all of the allegations in the Action or that they violated any law, and contends that at all times it has fully complied with all applicable federal, state, and local laws. Defendant further contends that its written meal and rest period policies were lawful, that it paid employees for all time worked, that it paid overtime when required and that it paid vested vacation wages, when applicable. It is Defendant’s position that, if litigation continued, class certification would be denied on all claims and/or the claims would be subject to motions for summary adjudication and/or summary judgment. Defendant contends that the theories put forth by the Plaintiff in the Action are contrary to the facts and lack merit. Defendant further contends that the Plaintiff is not an adequate class representative as her claims are not typical of the Class Members and individual issues predominate over common ones.

The Parties participated in one full-day mediation session with a respected wage and hour class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement Agreement”).

On [Preliminary Approval Date], the Court entered an order preliminarily approving the Settlement. The Court has appointed _____ as the administrator of the settlement (“Settlement Administrator”), Plaintiff as representative of the Class (“Class Representative”), and the following law firm as counsel for the Class (“Class Counsel”):

Zorik Mooradian
Haik Hacopian
Mooradian Law, APC
24007 Ventura Blvd., Suite #210
Calabasas, California 91302

The settlement represents a compromise and settlement of highly disputed claims. Nothing in the settlement is intended or will be construed as an admission by Defendant that the claims in the Action have merit or that Defendant has any liability to Plaintiff or to Class Members. Plaintiff and Defendant, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the settlement is fair, reasonable and adequate, and that the settlement is in the best interests of the Class Members.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total Gross Settlement Sum is Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) (the “Gross Settlement Sum”). The portion of the Gross Settlement Sum that is available for payment to Class Members who do not timely and validly request exclusion from the settlement (“Participating Class Members”) is referred to as the “Net Settlement Sum.” The Net Settlement Sum will be the Gross Settlement Sum less the following payments which are subject to Court approval : (1) attorneys’ fees in the amount of up to \$250,000.00 and reimbursement of litigation costs and expenses in the amount not to exceed \$14,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff in the amount of up to \$5,000.00 (“Service Payment”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$18,000.00 (“Settlement Administration Fees”); and (4) the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the amount of \$20,000.00 to the California Labor and Workforce Development Agency (“LWDA”).

Participating Class Members will be entitled to receive payment under the settlement of their share of the Net Settlement Sum (“Individual Settlement Amount”) based on number of workweeks worked by the Class Members as hourly-paid or non-exempt employees for Defendant from January 1, 2017 to the Preliminary Approval Date, in the State of California (“Workweeks”). Workweeks were calculated based on the start and end dates of each Class Member’s employment or work period during the Class Period and dividing by seven.

Individual Settlement Amounts will be calculated using the following formula: each Participating Class Member’s

individual Workweeks will be divided by the total aggregate Workweeks of all Participating Class Members to derive his or his Payment Ratio Fraction. Each Participating Class Member's Payment Ratio Fraction will be multiplied by the Net Settlement Sum to determine the Individual Settlement Amount.

Each Individual Settlement Amount will be allocated as one third wages (which will be reported on an IRS Form W2), and two-thirds penalties and interest (which will be reported on an IRS Form 1099, if applicable). Each Individual Settlement Amount will be subject to reduction for the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Amount, resulting in a net payment to the Settlement Class Member referred to as the "Individual Settlement Payment."

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

B. Your Workweeks Based on Defendant's Records

According to Defendant's payroll records:

From January 1, 2017 to the Preliminary Approval Date, you worked [REDACTED] Workweeks at one or more of Defendant FMS Management's McDonald's restaurants.

A description of how Workweeks were calculated and credited to Class Members is described above in Section III.A. If you wish to dispute the Workweeks credited to you, you may submit such dispute (a "Workweeks Dispute") in writing to the Settlement Administrator. The written dispute must: (a) contain your full name, address, telephone number, the last four digits of your Social Security Number, and signature; (b) contain the case name and number of the action (*Martina E. Gonzalez v. FMS Management*, Orange County Superior Court Case No. 30-2019-01065563-CU-OE-CXC); (c) contain a clear statement indicating that you dispute the number of Workweeks credited to you; (d) documentation that supports your belief that you should be credited with a different number of Workweeks; and (e) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **no later than [Response Deadline]**.

C. Your Estimated Individual Settlement Amount

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

Your Individual Settlement Amount is estimated to be \$ [REDACTED].

The Individual Settlement Amount is subject to reduction for employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Amount and will only be distributed if the Court approves the settlement and after the settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Amount reflected in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

D. Released Claims

Upon funding of the settlement by Defendant, each of the Participating Class Members (including the Class Representative) will be deemed to have, and by operation of the Judgment will have fully, finally, and forever released, relinquished and discharged Defendant and the Released Parties from any and all Released Claims.

"Released Claims" by the Participating Class Members includes, but are not limited to, all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever including without limitation statutory, constitutional, contractual or common law claims, against the Released Parties (as defined below), and any of them, for relief and penalties, that accrued during the Class Period, and as a result of Class Members' employment by Defendant in California, that arise under any state or local law or state administrative order that was or could have been pled based on the facts alleged in the Operative Complaint, including claims of failure to pay minimum and overtime wages, failure to provide compliant meal and rest periods and/or associated premiums, failure to provide accurate wage statements, failure to pay wages timely at termination, failure to pay vested vacation wages, unfair competition, PAGA civil penalties pursuant to § 2698, et seq. and other related penalties for violations of California Labor Code §§ 201, 202, 203, 204, 226, 226(a), 226.7, 227.3, 510, 512,

1194, 1194.2, 1197, 1197.1, 1198, 17200, 2699, the applicable Wage Order of the Industrial Wage Commission, and California Business & Professions Code §§ 17200 to 17208, including without limitation all related claims for restitution and other equitable relief arising from California Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid wages, attorneys' fees or litigation costs, and any other related claims and/or penalties, including civil penalties. The release does not extend to any claims not alleged in the Operative Complaint and specifically excludes claims for workers' compensation, personal injuries, unemployment insurance, state disability compensation, claims under the Employment Retirement Income Security Act of 1974, previously vested benefits under any employer sponsored benefits plan, wrongful termination, discrimination, retaliation, and harassment including but not limited to those arising under the Age Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or regulation concerning discrimination, retaliation and/or harassment.

"Released Parties" means Defendant FMS Management, and each of its parent companies, subsidiaries, affiliates, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

E. Attorneys' Fees and Costs to Class Counsel

Class Counsel will seek attorneys' fees in an amount of up to one-third of the Gross Settlement Sum (i.e., an amount of up to \$250,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Fourteen Thousand Dollars (\$14,000.00), to be paid from the Gross Settlement Sum, subject to approval by the Court. Class Counsel has been prosecuting the Action on behalf of Plaintiff and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Service Payment to Plaintiff

Plaintiff will seek the amount of Five Thousand Dollars (\$5,000.00) as a Service Payment in recognition of her services in connection with the Action. The Service Payment will be paid from the Gross Settlement Sum subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to her Individual Settlement Payment that she is entitled to under the settlement.

G. Settlement Administration Fees to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eighteen Thousand Dollars (\$18,000.00) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the settlement, processing Requests for Exclusion, Workweeks Disputes, and objections, calculating Individual Settlement Payments, and distributing payments and tax forms under the settlement, and shall be paid from the Gross Settlement Sum subject to approval by the Court.

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

A. Participate in the Settlement

If you want to receive money from the settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment unless you decide to exclude yourself from the settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Claims against the Released Parties as described in Section III.D above. As a Class Member, you will not be separately responsible for the payment of attorney's fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the settlement, you may seek exclusion from the settlement by completing and submitting the enclosed Request for Exclusion Form or another written request to be excluded from the settlement ("Request for

Exclusion”) to the Settlement Administrator at the following address:

Settlement Administrator
[Address]

A request for exclusion must: (a) contain your full name, address, the last 4 digits of Social Security Number, and signature; (b) contain the case name and number of the Action (*Martina E. Gonzalez v. FMS Management*, Orange County Superior Court Case No. 30-2019-01065563-CU-OE-CXC); (c) contain a statement indicating that you intend to be excluded from the settlement; and (4) be mailed to the Settlement Administrator at the address listed above, postmarked **no later than [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be entitled to receive any payment from the settlement, will not be bound by the settlement (and the release of Released Claims stated in Section III.D above), and will not have any right to object to, appeal, or comment on the settlement. Any Class Members who do not submit a timely and valid Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the settlement, including those pertaining to the release of Released Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

C. Object to the Settlement

You can object to the terms of the settlement as long as you have not submitted a Request for Exclusion.

To object, you must do so by completing and submitting the enclosed Objection Form or another written objection that: (a) contains your full name, dates of employment as a non-exempt or hourly-paid employee of Defendant in California, the last 4 digits of your Social Security Number, and signature; (b) contains the case name and number of the Action (*Martina E. Gonzalez v. FMS Management*, Orange County Superior Court Case No. 30-2019-01065563-CU-OE-CXC); (c) all legal and factual bases for the objection to the Settlement; (d) whether you intend to appear at the Final Approval Hearing; (e) whether you are represented by legal counsel, and if so, identify the legal counsel and their address; and (f) is mailed to the Settlement Administrator and postmarked **no later than [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department C16 of Orange County Superior Court at 700 W. Civic Center Drive, Santa Ana, California 92702, on **[Final Approval Hearing Date]**, at **[Time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys’ fees and costs to Class Counsel, Service Payment to Plaintiff, and Settlement Administration Fees to the Settlement Administrator should be awarded.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to do so.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. If you would like a complete copy of the Settlement Agreement, please contact Settlement Class Counsel. You may also go to the Court’s website at <http://www.occourts.org/online-services/case-access/>, select “Civil Case & Document Access,” and enter the case number (30-2019-01065563-CU-OE-CXC) to electronically access all publicly filed documents in the lawsuit. Please note that fees may be charged by the Court for retrieval of any documents. **PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

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

The statements in this document are not findings by a court of law. These statements are not an expression of opinion or approval by a judge. This notice is based only on statements by the Parties to this Lawsuit. You received this notice to help you decide what steps, if any, to take regarding this Lawsuit.

Gonzalez v. FMS Management,
Case No. 30-2019-01065563-CU-OE-CXC
REQUEST FOR EXCLUSION FORM

MAIL OR FAX TO:

Gonzalez v. FMS Management

c/o CPT Group, Inc.
50 Corporate Park,
Irvine, CA 92606

Fax: 1-949-419-3446

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU **WILL NOT RECEIVE** ANY PAYMENT FROM THE SETTLEMENT.

I request to be excluded from the Settlement in the matter of *Gonzalez v. FMS Management*, Case No. 30-2019-01065563-CU-OE-CXC (Orange County Superior Court).

I understand that by submitting this Request for Exclusion Form, I will no longer be eligible for a payment from the settlement.

Sign your name here

Print your full name here

Date

Your current address

Your telephone number

Last four digits of your Social Security Number

Gonzalez v. FMS Management,
Case No. 30-2019-01065563-CU-OE-CXC

OBJECTION FORM

MAIL OR FAX TO:

Gonzalez v. FMS Management

c/o CPT Group, Inc.
50 Corporate Park,
Irvine, CA 92606

Fax: 1-949-419-3446

COMPLETE THIS FORM **ONLY IF** YOU WISH TO OBJECT TO THE SETTLEMENT. IF YOU OBJECT AND THE COURT OVERRULES YOUR OBJECTION, YOU **WILL RECEIVE** YOUR PAYMENT FROM THE SETTLEMENT AND BE BOUND BY ALL TERMS OF SETTLEMENT, INCLUDING THE RELEASE OF CLASS CLAIMS, AS EXPLAINED IN THE CLASS NOTICE.

I hereby object to the Settlement in the matter of *Gonzalez v. FMS Management*, Case No. 30-2019-01065563-CU-OE-CXC (Orange County Superior Court) for the following reasons:

- ☐ I intend to appear at the Final Approval Hearing on [DATE] at [TIME]
- ☐ I am represented by my own attorney who is identified as follows (name, address, phone no., etc.):

Sign your name here

Print your full name here

Date

Your dates of employment

Your current address

Your telephone number

Last four digits of your Social Security Number

EXHIBIT "3"