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7 *Attorneys for Plaintiffs*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF SACRAMENTO**

10 LANZELL SMITH, individually, and on behalf
 11 of other members of the general public similarly
 12 situated;

13 **Plaintiff,**

14 **v.**

15 AMERICAN CAMPUS COMMUNITIES
 16 SERVICES, INC., a Delaware corporation; and
 DOES 1 through 100, inclusive;

17 **Defendants.**

Case No.: 34-2020-00280934

Honorable Shama H. Mesiwala
 Department 53

CLASS ACTION

**DECLARATION OF DOUGLAS HAN IN
 SUPPORT OF PLAINTIFFS' MOTION FOR
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT, CONDITIONAL
 CERTIFICATION, APPROVAL OF CLASS
 NOTICE, SETTING OF FINAL APPROVAL
 HEARING DATE**

[Reservation ID: 2577696]

[Notice of Motion and Motion for Preliminary
 Approval and [Proposed] Order filed concurrently
 herewith]

Hearing Date: August 19, 2021
 Hearing Time: 1:30 p.m.
 Hearing Place: Department 53

Complaint Filed: June 18, 2020
 Jury Trial: None Set

1 **DECLARATION OF DOUGLAS HAN**

2 I, DOUGLAS HAN, hereby declare as follows:

3 1. I am an attorney duly licensed to practice law before all courts of the State of
4 California. I am the founding member of Justice Law Corporation. I am the attorney of record for
5 Plaintiffs Lanzell Smith and Rande McCormick (“Plaintiffs,” “Plaintiff Smith,” and “Plaintiff
6 McCormick”) and Class Members in the instant action. I have personal knowledge of the facts set
7 forth below and if called to testify I could and would do so competently.

8 2. In May of 2004, I graduated from Pepperdine University School of Law with a
9 Juris Doctorate degree. In May of 2001, I obtained a Bachelor of Science degree in Political Science
10 with a minor in English from University of Houston.

11 3. From approximately January 2004 to approximately May 2004, I served as a
12 Judicial Extern to the Honorable Lourdes G. Baird of the United States District Court for the Central
13 District of California.

14 4. Since its inception, in or around April of 2013, our firm has almost exclusively
15 focused on the prosecution of consumer and employment class actions, involving wage-and-hour
16 claims, unfair business practices or consumer fraud. Since that time, our firm has successfully
17 litigated to conclusion over one hundred ninety (190) wage-and-hour class or representative actions.
18 Currently, we are the attorneys of record in over a dozen employment-related putative class actions in
19 both state and federal courts in the State of California. During this relatively short time, in association
20 with other law firms, we have obtained millions of dollars on behalf of thousands of individuals in
21 California.

22 ***EXAMPLES OF CLASS ACTION RESULTS***

23 5. Attached hereto as “EXHIBIT 1” is true and correct copy of a spreadsheet
24 listing matters in which Justice Law Corporation was appointed as Class Counsel and/or obtained
25 approval of Class Action or representative PAGA settlements.

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1 6. Shunt Tatavos-Gharajeh is an Of Counsel at my office. He received his
2 undergraduate degree from University of California, Los Angeles and earned a Juris Doctorate from
3 Southwestern University School of Law. He was admitted to practice in California in 2010. He is
4 admitted to practice in the Courts of the State of California. The focus of his practice is class action
5 wage and hour law. He has worked on multiple class action cases that have been granted final
6 approval, including *Keles, et al. v. The Art of Shaving – FL, LLC* Alameda County Superior Court
7 Case No. RG13687151, *Esters et al v. HDB LTD. Limited Partnership* Kern County Superior Court
8 Case No. S-1500-CV-279879 DRL, *Bridgette Guzman, et al. v. International City Mortgage, Inc.* (San
9 Bernardino Superior Court Case No. CIVDS1502516), *Davidson et al. v. Lentz Construction General*
10 *Engineering Contractor* Kern County Superior Court Case No. S-1500-CV-279853 LHB, *Betancourt*
11 *v. Hugo Boss USA, Inc.* Los Angeles County Superior Court Case No. BC506988, *Porras et al. v. DBI*
12 *Beverage, Inc. et al.* Santa Clara County Superior Court Case No. 1-14-CV-266154, *Hartzell et al. v.*
13 *Truitt Oilfield Maintenance Corporation* Kern County Superior Court Case No. S-1500-CV-283011,
14 *Navarro-Salas et al. v. Markstein Beverage Co. et al.*, Sacramento County Superior Court Case No.
15 34-2015-00174957-CU-OE-GDS, *David White, et al. v. Pilot Travel Centers, LLC*, (San Joaquin
16 County Superior Court Case No. STK-CV-UOE-2013-0009098), *McKinnon, et al. v. Renovate*
17 *America, Inc., et al.*, San Diego Case No. 37-2015-00038150-CU-OE-CTL, *Evelyn Antoine, et al. v.*
18 *Riverstone Residential CA, Inc., et al.* (Sacramento Superior Court Case No. 34-2013-00155974), *Pina*
19 *v. Zim Industries, Inc.*, Kern County Superior Court Case No. S-1500-CV-284498 SPC, *Amaya v.*
20 *Certified Payment Processing et al.* Sacramento County Superior Court Case No. 34-2015-00186623-
21 CU-OE-GDS, *Burke v. Petrol Production Supply, Inc.* Kern County Superior Court Case no. BCV-15-
22 101092, *Ceron et al v. Hydro Resources-West, Inc.*, Kern County Superior Court Case No. BCV-15-
23 101461, *Chavana v. Golden Empire Equipment, Inc.*, Kern County Superior Court Case No. BCV-16-
24 102796, *De La Torre et al. v. Acuity Brands Lighting, Inc.*, San Bernardino County Super Court Case
25 No. CIVDS1601800, *Dobbs v. Wood Group PSN, Inc.*, Case No. BCV-16-101078 Kern County
26 Superior Court Case No. BCV-16-101078-DRL, *Gonzalez et al v. Matagrano, Inc.*, San Francisco
27 County Superior Court Case No. CGC-16-550494, *Harbabikian et al. v. Williston Financial Group,*
28 *LLC*, Ventura County Superior Court Case No. 56-2016-004485186-CU-OE-VTA, *Prince v. Ponder*

1 *Environmental Services, Inc.*, Kern County Superior Court Case No. BCV-16-100784, *Ramirez v.*
2 *Crestwood Operations, LLC* Kern County Superior Court Case No. BCV-17-100503, *Reyes v.*
3 *Halliburton Energy Services, Inc.*, Kern County Superior Court Case No. S-1500-CV-280215,
4 *Rodriguez v. B&L Casing Serve, LLC et al.*, Kern County Superior Court Case No. S-1500-CV-
5 282709, *Marketstar Wage and Hour Cases*, Alameda County Superior Court Case No. JCCP004820,
6 *Rodriguez et al. v. Delta Sierra Beverage, LLC* Sacramento County Superior Court Case No. 34-2017-
7 00206727, *Stuck v. Jerry Melton & Sons Construction, Inc.*, Case No. BCV-16-101516, *Blevins v.*
8 *California Commercial Solar, Inc.* Kern County Superior Case No. BCV-17-100571, *Cisneros et al v.*
9 *Wilbur-Ellis Company, LLC*, Kern County Superior Court Case No. BCV-17-102836, *Castro et al. v.*
10 *General Production Service of California, Inc.*, Kern County Superior Court Case No. BCV-15-
11 101164. He was also certified as class counsel in *Fulmer et al. v. Golden State Drilling, Inc.*, Kern
12 County Superior Court Case No. S-1500-CV-279707, *Manas et al. v. Kenai Drilling Limited*, Los
13 Angeles County Superior Court Case No. BC546330, *Nuncio et al. v. MMI Services, Inc.*, Kern
14 County Superior Court Case No. S-1500-CV-282534, cases that were certified after a contested class
15 certification. He is also currently managing at least a dozen class actions currently pending in various
16 courts throughout the state of California.

17 7. Arsiné Grigoryan is an Associate at my office. She earned two Bachelor of Arts
18 degrees from the University of California, Berkeley: (1) political science with an emphasis on
19 international relations; and (2) media studies. She obtained her Juris Doctor degree from
20 Southwestern Law School, where she also served on the Board of Governors of the Trial Advocacy
21 Honors Program and competed in national trial competitions. During law school, she also served as a
22 student editor for the Journal of International Media & Entertainment Law and, upon graduation, had
23 the privilege of being selected for the American Board of Trial Advocates (ABOTA) Fellowship. She
24 has also researched and drafted an article focused on international law and humanitarian issues, which
25 was ultimately published in a United Kingdom publication (Arsiné Grigoryan, Severing the Next
26 Generation: Sexual Violence in Genocide 3 U.K. L. Student Rev. 41 (2015)). She is presently
27 admitted to practice in all state courts of California (admitted in 2017) and before all federal district
28 courts in California. The focus of her practice at Justice Law Corporation is currently on class action

1 wage-and-hour law, including Private Attorneys General Act of 2004 (“PAGA”) matters. She has
2 worked on multiple cases which have received final approval, including *Fulmer v. Golden State*
3 *Drilling*, S-1500-CV-279707-SDS in Kern County Superior Court; *Lee v. Westside Habitats, LLC*,
4 BC702296 in Los Angeles County Superior Court (Spring Street Courthouse); *Castro v. General*
5 *Production Service of California Inc.*, BCV-15-101164-DRL in Kern County Superior Court; *Garcia*
6 *v. Hronis, Inc.*, BCV-18-101510-DRL in Kern County Superior Court; *McCollumn v. Delta Tech*
7 *Service, Inc.*, FCS049504 in Solano County Superior Court; *Morel v. Aseptic Solutions USA Ventures,*
8 *LLC*, RIC1711383 in Riverside County Superior Court; *Garcia v. Glide Rite*, BC665485 in Los
9 Angeles County Superior Court (Spring Street Courthouse); *Castillo v. Gabriel I. Cruz dba GIC*
10 *Transport, Inc.*, BCV-17-101807 in Kern County Superior Court; *Xiong v. Hilltop Ranch, Inc.*, 18CV-
11 01340 in Merced County Superior Court; *Valencia v. Hill Phoenix, Inc.*, CIVDS1715125 in San
12 Bernardino County Superior Court; *Balderama v. Steeler Inc.*, BCV-18-102314 in Kern County
13 Superior Court; *Bunche v. Mettler-Toledo Rainin, LCC*, RG18899279 in Alameda County Superior
14 Court; *Godinez v. Lazer Spot, Inc.*, BCV-17-102721 in Kern County Superior Court; *Arciniega v. OnY*
15 *Glo, Inc., dba OGI Mortgage Bankers*, CIVDS1901760 in San Bernardino County Superior Court;
16 *Corona v. Property West*, 37-2017-00028103-CU-OE-CTL in San Diego County Superior Court;
17 *Olivas v. VCI Construction*, CIVDS1800174 in San Bernardino County Superior Court; *Harrington v.*
18 *Arlon Graphics, LLC*, 30-2018-00970444-CU-OE-CXC in Orange County Superior Court; and
19 *Sanchez v. Sunpower Corporation*, BCV-18-102563-SDS in Kern County Superior Court. She is also
20 handling at least a dozen active class action and representative PAGA matters currently pending in
21 various courts throughout the State of California.

22 8. The number of Class Members provided by Defendant American Campus
23 Communities Services, Inc. (“Defendant”) and extrapolated through the Class Period is currently
24 estimated to be approximately seven hundred thirty-one (731).

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1 9. Since 1993, Defendant has been the nation’s leading provider of academically
2 oriented student communities. Specifically, Defendant is the nation’s largest developer, owner, and
3 manager of high-quality student housing communities. This case involves all current and former non-
4 exempt employees of Defendant in California during the Class Period (“Class”). The Class Period is
5 the time period from June 18, 2016, through August 6, 2021, or the date of Preliminary Approval,
6 whichever date is earlier (“Class Period”). Plaintiffs always allege that during the Class Period,
7 Defendant’s non-exempt employees work and/or worked on an hourly basis.

8 10. Plaintiff Smith, a former employee of Defendant, filed a wage-and-hour class
9 action complaint against Defendant on June 18, 2020 in the Superior Court of California, County of
10 Sacramento (“Smith Action” or “Class Action”). The Smith Action was brought on behalf of all
11 current and former California-based (*i.e.*, currently “residing” in California with the intent to remain in
12 California indefinitely) hourly-paid or non-exempt employees of Defendant within the State of
13 California at any time during the relevant period. The Smith Action alleged the following eight (8)
14 causes of action: (1) violation of California Labor Code sections 510 and 1198 (unpaid overtime); (2)
15 violation of Labor Code sections 226.7 and 512(a) (unpaid meal break premiums); (3) violation of
16 Labor Code section 226.7 (unpaid rest break premiums); (4) violation of Labor Code section 1194 and
17 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not
18 timely paid); (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation
19 of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of
20 California Business & Professions Code section 17200, *et seq.*

21 11. On July 31, 2020, Defendant removed the Smith Action to the United States
22 District Court, Eastern District of California. Plaintiff Smith filed a Motion to Remand on August 31,
23 2020, Defendant opposed the motion, and Plaintiff Smith replied. The Smith Action was remanded
24 back to the Superior Court of California, County of Sacramento, on June 30, 2021.

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1 12. On May 28, 2020, Plaintiff McCormick, also a former employee of Defendant,
2 provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant
3 of the specific provisions of the Labor Code he contends were violated and the theories supporting his
4 contention. The sixty-five (65) day notice period expired on or about August 1, 2020, and the LWDA
5 did not take any action to investigate or prosecute this matter.

6 13. On August 3, 2020, Plaintiff McCormick filed his Private Attorneys General
7 Act of 2004 (“PAGA”) representative action against Defendant in the Superior Court of California,
8 County of San Diego (“McCormick Action”). The matter was brought on behalf of all current or
9 former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency or
10 labor contractor) of Defendant who worked for Defendant at any time during the period from May 28,
11 2019 to the present. Plaintiff McCormick alleged that Defendant: (1) failed to pay minimum and
12 overtime wages; (2) failed to provide meal and rest breaks; (3) failed to timely pay wages during
13 employment; (4) failed to timely pay wages upon termination; (5) failed to provide complete and
14 accurate wage statements; and (6) failed to reimburse all business expenses.

15 14. The Parties attended mediation on Plaintiffs’ claims on April 29, 2021. Under
16 the auspices of the mediator Lynn S. Frank, the Parties were eventually able to reach an agreement on
17 the settlement of the action via a mediator’s proposal.

18 15. In July 2021, in line with the settlement reached between the Parties at
19 mediation, Plaintiff Smith filed a First Amended Complaint (“FAC”) of the Smith Action in the
20 Superior Court of California, County of Sacramento, on behalf of themselves and all current and
21 former California-based (*i.e.*, currently “residing” in California with the intent to remain in
22 California indefinitely) non-exempt employees of Defendant within the State of California at any
23 time during the relevant period. The FAC added Plaintiff McCormick as an additional Plaintiff and
24 added a PAGA cause of action.

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1 16. Defendant generally and specifically denies all liability or wrongdoing of any
2 sort regarding any of the claims alleged, makes no concessions or admissions of liability of any sort,
3 and contends that for any purpose other than settlement, the Class Action is not appropriate for class
4 treatment. Furthermore, Defendant asserts several defenses to the claims, and has denied any
5 wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action.

6 17. Prior to the Parties' mediation held on April 29, 2021, the Parties conducted
7 significant investigation and discovery of the facts and law both before and after the initial Class
8 Action was filed. Prior to mediation, Defendant produced hundreds of documents relating to its
9 policies, practices, and procedures regarding reimbursement of business expenses, paying Class
10 Members for all hours worked, meal and rest period policies, and payroll and operational policies. As
11 part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information
12 relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the
13 number of workweeks in the Class Period. Plaintiffs and Defendant also interviewed several of Class
14 Members, and others, who worked for Defendant throughout the Class Period.

15 18. The Parties agree that the above-described investigation and evaluation, as well
16 as the information exchanged during the settlement negotiations, are more than sufficient to assess the
17 merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

18 19. Based upon the Parties' discovery, and interviews Plaintiffs' counsel had with
19 non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to provide
20 employees legally mandated rest breaks. Specifically, Defendant's rest break policy from June 2016 to
21 2020 failed to authorize and permit duty-free rest breaks because it explicitly prohibited employees
22 from leaving the work premises during their rest breaks. Even after this was amended in 2020,
23 Defendant's rest break policy still subtly warned employees to promptly return to their shifts and
24 refrain from traveling to far, which deterred employees from leaving the work premises. Additionally,
25 Plaintiffs also allege that employees were forced to skip most of their rest breaks because of pressures
26 from Defendant to timely complete their assignments. This meant employees could not take rest
27 breaks if they were in the middle of a job. These pressures to forgo their rest breaks to promptly
28 complete their tasks was exacerbated by Defendant being understaffed and the high volume of work

1 employees were regularly assigned. Finally, Plaintiffs assert Defendant did not have a policy or
2 practice of consistently paying employees premium wages for noncompliant rest breaks.

3 20. Moreover, Plaintiffs assert – and Defendant denies – that Defendant failed to
4 provide employees with legally mandated meal breaks. Specifically, Defendant’s meal break policy
5 from June 2016 to 2020 also failed to authorize and permit duty-free meal breaks because it was silent
6 in allowing employees to leave the work premises during meal breaks. Furthermore, Plaintiffs also
7 contend that Defendant’s practices also deprived employees of receiving compliant meal breaks.
8 Specifically, Defendant regularly being understaffed along with assigning employees heavy workloads
9 frequently forced employees to miss their meal breaks. Like rest breaks, Defendant also prohibited
10 employees from leaving if they were in the middle of their work, which resulted in several missed and
11 late meal breaks. Even when employees received meal breaks, they were constantly interrupted and
12 cut short by work-related matters. Finally, Plaintiffs allege that Defendant failed to have a policy or
13 practice of consistently paying employees premium wages for noncompliant meal breaks.

14 21. Plaintiffs also assert – and Defendant denies – that Defendant failed to
15 compensate employees for all hours worked. Specifically, Defendant’s stringent Absenteeism and
16 Tardiness policy, general discouragement of working overtime (preapproval was required), and use of
17 arbitrary concepts (*i.e.*, “Overtime pay is based on actual hours worked”) pressured employees to work
18 additional hours off-the-clock. Moreover, Plaintiffs contend that the nature of their jobs regularly
19 forced them to work off-the-clock to complete their assignments. For example, because employees
20 faced termination for working unauthorized overtime hours, they had no choice but to complete some
21 of their heavy workloads off-the-clock to avoid disciplinary action. Even after employees completed
22 their shifts and clocked out for the day, Defendant still tasked them with completing more assignments
23 (*i.e.*, planning community events). Defendant’s general discouragement of overtime work also forced
24 employees to record their hours worked in a way that did not indicate overtime work. Finally,
25 Plaintiffs assert that Defendant failed to compensate employees for time spent on-call despite placing
26 several restrictions on how employees could spend their off hours. Instead, Defendant compensated
27 employees only when a call came in.

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1 22. Furthermore, Plaintiffs contend – and Defendant denies – that Defendant failed
2 to incorporate non-discretionary bonuses and incentives into employees’ regular rates for overtime
3 compensation purposes. These non-discretionary bonuses included awarding employees gift cards for
4 persuading residents to complete surveys regarding customer satisfaction. The more surveys residents
5 completed, the higher the employees’ gift card amount. Yet, these gift cards were not factored into
6 employees’ regular rates for overtime purposes.

7 23. Next, Plaintiffs allege – and Defendant denies – that Defendant failed to
8 reimburse employees for necessary business-related expenses incurred. Specifically, employees were
9 expected to use their personal vehicles to travel to different jobsites (*i.e.*, apartments, volunteer events)
10 to complete work orders or other tasks. Yet, Defendant failed to reimburse them for the gas or
11 mileage. Plaintiffs also contend employees were expected to use their personal cell phones daily for
12 business-related purposes (*i.e.*, communicating with supervisors and managers, receiving emergency
13 calls). Despite this, Defendant did not reimburse employees for this usage, and its policies reflect that
14 there was a general reluctance to reimburse employees for such an expense.

15 24. Additionally, Plaintiffs contend – and Defendant denies – that Defendant is
16 liable for waiting time penalties. Specifically, Defendant’s hourly-paid or non-exempt employees are
17 entitled to back underpaid overtime and compensation for time worked off-the-clock as well as missed
18 meal and rest breaks discussed in greater detail above, thereby triggering waiting time penalties under
19 Labor Code section 203. Thus, Defendant owes compensation for underpaid work and missed meal
20 and rest breaks as a matter of fact and law. But Defendant intentionally failed or refused to perform an
21 act, which was required to be done, constituting “willful” conduct and justifying “waiting-time”
22 penalties under section 203 to former employees.

23 25. Finally, Plaintiffs assert – and Defendant denies – that Defendant is liable for
24 issuing noncompliant wage statements. Specifically, Defendant issued wage statements in violation of
25 Labor Code section 226(a) because of the underlying violations discussed above (*i.e.*, missed meal and
26 rest breaks, no premium wages, off-the-clock work). Consequently, Defendant’s wage statements
27 would necessarily be inaccurate. Even if Defendant asserts that its violation of section 226(a) is trivial,
28 the California courts have held that strict compliance of section 226(a) is exactly what is intended.

1 26. Defendant denies Plaintiffs’ contentions in their entirety. Among other things,
2 Defendant denies Plaintiffs’ meal and rest break contentions, on the grounds that it provided breaks
3 within compliant times and that non-exempt employees were given discretion as to when to take their
4 breaks. Defendant also contends that both its meal and rest break policies complied with California
5 law and that non-exempt employees were allowed to use their breaks for their own purposes.
6 Moreover, Defendant counters that its policies were never intended to discourage or deter employees
7 from taking duty-free meal and rest breaks nor did it regularly assign heavy workloads that pressured
8 noncompliant breaks. Defendant further contends that whether non-exempt employees took meal and
9 rest breaks during compliant time frames and were relieved of all duties are questions that could only
10 be resolved by resorting to individualized inquiries to each non-exempt employee and, therefore, class
11 certification would not be appropriate. Defendant also asserts that it paid its employees for all times
12 worked, including overtime, minimum, and premium wages. Defendant counters that its policies or
13 practices rarely, if ever, forced employees work additional hours off-the-clock without asking for
14 compensation. Defendant also adds that it properly compensated employees for being on-call. Further,
15 Defendant contends that Plaintiffs’ claims regarding off-the-clock work and unpaid overtime are
16 trivial as only a small number of employees worked off-the-clock. Moreover, Defendant contends it
17 did factor non-discretionary bonuses and incentives into eligible employees’ regular rates for overtime
18 purposes. Defendant also asserts that it reimbursed employees for all business expenses, including
19 using their personal cell phones and personal vehicles. Finally, Defendant argues that its failure to
20 comply with California labor laws was an honest mistake made in good faith. Thus, Defendant’s
21 conduct could not be deemed “willful” under Labor Code section 203.

22 27. The Parties agreed to go to mediation with experienced wage and hour
23 mediator, Lynn S. Frank. The mediation took place on April 29, 2021. During the mediation, the
24 Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the
25 claims versus the benefits of settlement. Under the auspices of the mediator, the Parties were able to
26 reach an agreement on a settlement of the Class Action pursuant to a mediator’s proposal, the terms of
27 which were memorialized in a “Joint Stipulation and Settlement Agreement” (“Settlement
28 Agreement,” “Settlement,” or “Agreement”), that the Parties now seek Preliminary Approval of in the

1 instant motion. Attached hereto as **Exhibit 2** is a true and correct copy of the Settlement Agreement.

2 28. The Parties have agreed (subject to and contingent upon the Court’s approval)
3 that this action be settled and compromised for the non-reversionary total sum of \$2,000,000 (“Gross
4 Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an amount
5 not to exceed thirty-eight percent (38%) of the Gross Settlement Amount or \$760,000 to compensate
6 Class Counsel for work already performed and all work remaining to be performed in documenting the
7 settlement, administrating the settlement and securing Court approval; (b) Cost Award for actual
8 litigation costs not to exceed \$25,000; (c) Class Representative Enhancement Payment in the amount
9 of \$10,000 to each Class Representative in recognition of Plaintiffs’ work and efforts in obtaining the
10 benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not
11 successfully resolved; (d) Administration Costs to CPT Group, Inc. (“CPT Group”), the Settlement
12 Administrator that is currently estimated to be \$13,000, but not to exceed \$15,000; and (e) PAGA
13 Payment of \$150,000, seventy-five percent (75%) of which (\$112,500) shall be paid to the LWDA and
14 twenty-five percent (25%) of which (\$37,500) shall be part of the Net Settlement Amount distributed
15 to the aggrieved employees eligible to recover the PAGA Payment that consist of all current and
16 former non-exempt employees who worked for Defendant within the State of California between May
17 28, 2019, through August 6, 2021, or Preliminary Approval Date, whichever date is earlier (“Eligible
18 Aggrieved Employees,” “PAGA Timeframe,” and “PAGA Payment”), on a pro rata basis.

19 29. The actual amount of actual litigation costs will be provided to the Court in
20 conjunction with Plaintiffs’ motion for final approval. At that time, Plaintiffs will ask the Court to
21 approve the amount of these costs. If Plaintiffs’ actual litigation costs exceed \$25,000, Plaintiffs will
22 only seek reimbursement in the amount of \$25,000. If the amount awarded is less than the amount
23 requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall
24 become part of the Net Settlement Amount and be available for distribution to all Class Members who
25 do not submit a valid and timely request to exclude themselves from this Settlement “(Participating
26 Class Members”).

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1 30. After all Court-approved deductions from the Gross Settlement Amount, it is
2 estimated that \$1,069,500 (“Net Settlement Amount”) will be distributed to Class Members – with an
3 average Individual Settlement Share estimated at \$1,463.06.

4 31. The Settlement Administrator will pay the amount of the Participating Class
5 Members’ portion of normal payroll withholding taxes out of each person’s Individual Settlement
6 Share. The Settlement Administrator will calculate the amount of the Participating Class Members’
7 and Defendant’s portion of payroll withholding taxes and pay those amounts from the Gross
8 Settlement Amount. Finally, the Settlement Administrator will submit Defendant’s portion of payroll
9 withholding tax and forward those amounts along with each person’s Individual Settlement Share
10 withholdings to the appropriate taxing authorities.

11 32. The Settlement Administrator will calculate and pay an Individual Settlement
12 Share from the Net Settlement Amount to each Participating Class Member. Each Participating Class
13 Member will receive a proportionate share of the Net Settlement Amount that is equal to:

14 (i) the number of weeks he or she worked as a Class Member during the Class Period
15 based on the Class data provided by Defendant, divided by (ii) the total number of
16 weeks worked by any and all Class Members during the Class Period based on the
17 same Class data, which is then multiplied by the Net Settlement Amount. A partial
18 week worked in a given week will be credited as a workweek for purposes of this
19 calculation. Therefore, the value of each Participating Class Member’s Individual
20 Settlement Share ties directly to the amount of weeks that he or she worked.

21 33. Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved
22 Employee according to their proportional share, which will be calculated and will be based upon the
23 total number of pay periods he or she was employed during the PAGA Timeframe. The individual
24 share will be calculated by:

25 determining the total number of pay periods the Eligible Aggrieved Employees were employed
26 during the PAGA Timeframe (i.e., the sum of all pay periods of employment for each eligible
27 aggrieved employee) and dividing that number into the \$37,500 amount allocated to Eligible
28 Aggrieved Employees to determine the monetary value assigned to each pay period. That
number will then be multiplied by the individual Eligible Aggrieved Employee’s total number
of pay periods employed during the PAGA Timeframe to determine that individual’s
proportional share.

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1 34. The precise number of compensable weeks worked per Class Member will not
2 be known until Defendant has tabulated them, following preliminary approval. No portion of the Gross
3 Settlement Amount will revert to Defendant for any reason.

4 35. Within Thirty (30) calendar days after entry of the Preliminary Approval Order,
5 Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each
6 Class Member: (i) last known addresses, (ii) telephone numbers and/or emails to the extent they are
7 available, and (iii) social security numbers and dates worked (“Database”).

8 36. Within fourteen (14) calendar days after the Settlement Administrator’s receipt
9 of the Database, the Settlement Administrator will mail the Notice of Class Action Settlement (“Class
10 Notice”)¹ to all identified Class Members via first-class regular U.S. Mail, using the mailing address
11 information provided by Defendant and the results of the National Change of Address database
12 (“NOCA”) search performed on all former Defendant employee Class Members. Class Members are
13 not required to submit a claim form to receive their Individual Settlement Shares.

14 37. No later than twenty-one (21) calendar days after the Effective Final Settlement
15 Date, Defendant shall deposit the Gross Settlement Amount of \$2,000,000 needed to pay the entire
16 Gross Settlement Amount by wiring the funds to the Settlement Administrator. In the event there are
17 objectors to the Settlement Agreement, payment shall be made within twenty-one (21) calendar days
18 after the time to appeal has run or all appeals have been exhausted, whichever occurs later. Defendant
19 shall also at this time provide any tax information that the Settlement Administrator may need to
20 calculate each Participating Class Members’ Individual Settlement Share, to the extent it is within
21 Defendant’s possession.

22 38. Within fourteen (14) calendar days after the Funding of the Settlement, the
23 Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement,
24 including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class
25 Representative Enhancements, the PAGA Payment, and the Administration Costs. The Settlement
26 Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the
27 LWDA for settlement of the PAGA claim.

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¹ The **Class Notice** is attached to the Settlement Agreement (Exhibit 2 attached hereto) as **Exhibit A**.

1 39. Participating Class Members must cash or deposit their Individual Settlement
2 Share checks within one hundred twenty (120) calendar days after the checks are mailed to them. If
3 any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
4 Settlement Administrator will send a reminder postcard. If any checks remain uncashed or not
5 deposited by the expiration of the 30-day period after mailing the reminder notice, the Settlement
6 Administrator will, within one hundred fifty (150) calendar days after the checks are mailed, pay the
7 amount of the Individual Settlement Share to the California State Controller’s Unclaimed Property
8 Division in accordance with California Unclaimed Property Law so that the Participating Class
9 Member will have his or her Individual Settlement Share available to him or her per the applicable
10 claim procedure to request that money from the State of California.

11 40. As of the Effective Final Settlement Date, Class Members, who do not submit a
12 timely and valid Exclusion Form release, remise, and forever discharge the Released Parties from the
13 Released Claims for the Class Periods. Participating Class Members agree not to sue or otherwise
14 make a claim against any of the Released Parties for any of the Released Claims (“Released Claims”).
15 *See Exhibit 2 §§ (I)(EE), (III)(L).*

16 41. As provided in the Release of Claims, as of the Effective Final Settlement Date,
17 this settlement forever bars Plaintiffs, the LWDA, and any other representative, proxy, or agent
18 thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA
19 Timeframe, from pursuing any action under PAGA, Labor Code §§ 2698, *et seq.*, against, the
20 Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the
21 Case. *See Exhibit 2 § (III)(M).*

22 42. The Released Parties include Defendant and any of their present and former
23 parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and any of those
24 entities’ respective partners, shareholders, officers, directors, employees, agents, attorneys, insurers,
25 successors and assigns, and any individual or entity that could be liable for any of the Released Claims
26 in the FAC (“Released Parties”). *See Exhibit 2 § (I)(FF).*

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1 43. As of the Effective Final Settlement Date, and in exchange for the Class
2 Representative Enhancement Payment to the Plaintiffs in their respective amounts, in recognition of
3 their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
4 of costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of
5 claims for themselves and their spouse, heirs, successors and assigns. *See* Exhibit 2 § (III)(N).

6 44. The Settlement Agreement was reached because of arm’s-length negotiations.
7 Though cordial and professional, the settlement negotiations have been, always, adversarial, and non-
8 collusive in nature. At the mediation, Counsel for the Parties conducted extensive arm’s length
9 settlement negotiations until an agreement was reached by all Parties via a mediator’s proposal.

10 45. Plaintiffs and Class Counsel believe in the merits of the case but also recognize
11 the expense and length of continued proceedings necessary to continue the litigation against Defendant
12 through class certification and trial and through any possible appeals. Plaintiffs and Class Counsel
13 have also considered the uncertainty and risk of further litigation, the potential outcome, and the
14 difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel have conducted
15 extensive settlement negotiations, including formal mediation on April 29, 2021. Based on the
16 foregoing, Plaintiffs and Class Counsel believe the settlement set forth in the Settlement Agreement is
17 a fair, adequate, and reasonable settlement, and is in the best interests of the Class.

18 46. The Parties thoroughly investigated and evaluated the factual strengths and
19 weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research,
20 and discovery to support the settlement. The proposed settlement was only possible following
21 significant discovery and evaluation of Defendant’s relevant policies and procedures, as well as the
22 data they produced for the putative Class, which permitted Class Counsel to engage in a
23 comprehensive analysis of liability and potential damages. Furthermore, this case has reached the
24 stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases”
25 sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

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1 47. This discovery resulted in Plaintiffs' central theories of liability, which are
2 predicated on Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal
3 and rest breaks and pay applicable premiums, failed to pay minimum wages, failed to pay final wages
4 in a timely manner, failed to issue compliant wage statements, failed to reimburse business expenses,
5 violated PAGA, and violated the Business & Professions Code sections 17200, *et seq.*

6 48. Defendant vehemently denies Plaintiffs' theories of liability and contend, as
7 stated above, that all meal and rest breaks were provided in compliance with California law, that all
8 wages were properly paid to Class Members, that it provided final wages in a timely manner, that it
9 provided wage statements in compliance with Labor Code section 226, and that it reimbursed all
10 business expenses. Defendant further contends that any mistakes made were honest rather than willful.
11 Finally, Defendant argues that if litigation were to continue, it feels confident that it would prevail.

12 49. Although Plaintiffs believe the case is suitable for certification on the basis that
13 there are company-wide policies that Plaintiffs contends violate California law and uniformly affect
14 the putative Class Members, uncertainties with respect to certification are always present. As the
15 California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification
16 is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached
17 different conclusions concerning certification of wage and hour claims.²

18 50. In addition to being able to discover the strengths and vulnerabilities associated
19 with Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
20 time and pay records and information regarding the estimated number of workweeks worked by Class
21 Members and the average hourly rate for Class Members. Defendant confirmed that there were
22 approximately 45,773 workweeks worked by Class Members. Plaintiffs were also able to determine
23 that the average hourly rate for Class Members was \$15.90.

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26 ² (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171 P.3d 545
28 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th
1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th
121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422 (affirming denial of
certification).)

1 51. Specifically, Plaintiffs assert that Defendant failed to provide employees with
2 legally mandated meal and rest breaks. Plaintiffs also assert Defendant failed to pay premium wages
3 throughout the Class Period for failing to provide compliant meal and rest breaks. An analysis of
4 Defendant's time records has revealed that there were 157,262 shifts that were eligible for rest breaks.
5 Due to Defendant's improper, uniform policies and practices described above, Defendant's exposure
6 for rest break premiums would likely be approximately \$750,139.74 ((157,262 shifts x 30% violation
7 rate) x \$15.90). Furthermore, Plaintiffs' expert analyzed that there were 39,847 shifts that had either
8 late or short meals. There were also 20,753 shifts worked more than six (6) hours without a recorded
9 meal break. It is likely that half of these shifts (10,377) did not receive meal breaks. If proven,
10 Defendant's exposure for meal break premiums would likely be approximately \$798,561.60 (50,224
11 shifts x \$15.90).

12 52. Moreover, Plaintiffs contend that Defendant failed to compensate employees for
13 all hours worked, including off-the-clock. Based on a reasonable estimate that Class Members were
14 able to prove that they worked approximately 1.25 hours of off-the-clock work per week, reasonable
15 estimate of damages at trial would be approximately \$909,738.38 (45,773 workweeks x 1.25 hours x
16 \$15.90). If using the overtime rate as certain shifts exceeded eight (8) hours per day or forty (40) hours
17 per week, the estimated damages at trial would be around \$1,364,607.56 (45,773 workweeks x 1.25
18 hours x rate of \$23.85).

19 53. Plaintiffs also contend that Defendant failed to reimburse employees for all
20 necessary business expenses. Specifically, employees were not reimbursed for using their personal cell
21 phones and personal vehicles for business-related purposes. In fact, Defendant's policies demonstrated
22 a general reluctance to reimburse employees for using their personal cell phones. With regards to
23 employees using their personal cell phones, arguably, at least thirty percent (30%) of the personal cell
24 phone charges are attributed to work. Using an average monthly charge of \$80.00, each monthly cost
25 would be approximately \$24.00 per month. As a result, the total amount that must be reimbursed for
26 personal cell phone use is likely approximately \$253,512 (10,563 months x \$24.00). As for employees
27 using their personal vehicles, likely ten percent (10%) of gas and mileage can be attributed to work.
28 Using an average monthly gas bill of \$100, each monthly cost would be approximately \$10.00 per

1 month. Consequently, the total amount that must be reimbursed for personal vehicle use is about \$105,630 (10,563 months x \$10.00).

54. Furthermore, Plaintiffs contends Defendant's wage statement liability pursuant to Labor Code section 226(a) and its exposure to statutory penalties is substantial. Plaintiffs calculate Defendant's maximum potential exposure as to this claim to be approximately \$1,083,350 (([1 x \$50] + [23 x \$100]) x 461 employees) (based on 24 average pay periods).

55. Finally, Plaintiffs assert that Defendant is liable for waiting time penalties. Plaintiffs calculate Defendant's maximum potential exposure as to this claim to be approximately \$1,740,096 (8 hours x \$15.90 average hourly rate x approximately 456 former non-exempt employees x 30 days).

56. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, and 2802. Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the current unsettled state of law.

57. Class Counsel calculated penalties under this cause of action by multiplying the number of active Class Members (because of the shortened statutory period for this claim), by the civil penalties that each could be awarded for the Labor Code sections enumerated under Labor Code section 2699.5 that were applicable in this case. Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, as well as the Court's power to award "a lesser amount than the maximum civil liability." (Lab. Code § 2699(e)(2).)

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1 58. Given the state of the law and the range of PAGA penalties requested and
2 actually awarded in California courts, it is difficult to determine a reasonable value and actual
3 exposure for PAGA penalties. However, if PAGA penalties are granted on any one of the violations
4 alleged in Plaintiffs’ operative complaint, the total penalties exposure for the eligible pay periods
5 could be approximately \$2,155,500 ($[(1 \times \$100) + (22 \times \$200)] \times 479$ employees). Plaintiffs calculated
6 Defendant’s PAGA exposure using one hundred percent (100%) violation rate based on the average
7 number of pay periods (23) during the one-year statutory period. Multiplying the PAGA exposure by
8 the number of alleged violations under the PAGA theories of recovery (6) gives potential civil
9 penalties of \$12,933,000.

10 59. Although Plaintiffs argued they could obtain over \$12 million for PAGA
11 penalties, it seems unlikely that the Court would award such a large amount. Under a more
12 conservative approach, Class Counsel considered the possibility that the Court could assess only the
13 initial violation rate, bringing the basic PAGA penalty to \$287,400 [479 employees x \$100 x 6
14 theories of recovery].

15 60. Plaintiffs also recognized the risk that any PAGA award could be significantly
16 reduced. Many of the causes of action brought were duplicative of the statutory claims such as
17 violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802.
18 Thus, the maximum penalties for each pay period are not justified. It was indeed arguable whether the
19 Court would award the maximum penalties under the law. Thus, allocating \$150,000 to PAGA civil
20 penalties was reasonable based on a rate of \$13.34 per pay period [$\$150,000 \div 11,241$ Pay Periods in
21 PAGA Date Range = \$13.34], given the fact that Defendant are also paying an additional \$1,850,000
22 in the class settlement.³ Where PAGA penalties are negotiated in good faith and “there is no
23 indication that [the] amount was the result of self-interest at the expense of other Class Members,”
24 such amounts are generally considered reasonable.⁴

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26 ³ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total
27 PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of
\$70,000,000).)

28 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see,
e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a
settlement which does not allocate any damages to the PAGA claims.”).)

61. Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$5,641,027.72 on the low end and \$6,095,896.90 on the high end.

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$750,139.74	70%	60%	\$90,016.77
Meal Break Premiums	\$798,561.60	60%	50%	\$159,712.32
Overtime/Minimum Wage: Off-the-Clock	\$909,738.38 to \$1,364,607.56	60%	60%	\$145,558.14 to \$218,337.21
Unreimbursed Business Expenses	\$359,142	40%	70%	\$64,645.56
Wage Statement Penalty	\$1,083,350	50%	50%	\$270,837.50
Waiting Time Penalty	\$1,740,096	50%	50%	\$435,024
MAXIMUM TOTAL EXPOSURE	\$5,641,027.72 to \$6,095,896.90			\$1,165,794.29 to \$1,238,573.36

62. Based on the rest breaks theories described above, Class Counsel believes a seventy percent (70%) certification risk and sixty percent (60%) risk on the merits is warranted. Up until 2020, Defendant allegedly failed to authorize and permit duty-free rest breaks because its rest break policy expressly prohibited employees leaving the work premises during rest breaks. Even after this was amended, Defendant apparently still maintained a subtle degree of control over employees during their rest breaks. Moreover, Defendant's practice of purportedly pressuring employees to timely complete their heavy workloads coupled with being understaffed resulted in a frequent amount of missed rest breaks. Conversely, Class Counsel understands that obtaining certification for rest breaks can be difficult and problematic partly because rest breaks are not recorded. Defendant can also produce evidence and testimony at trial to show that employees were free to leave the work premises from 2020 and onward with no pressures to return early. Next, Defendant may also bring in testimony to reveal employees were rarely, if ever, pressured to complete their tasks at the expense of receiving compliant rest breaks. This would mean that employees could take their rest breaks even if they were in the middle of a job and were not assigned heavy, time-sensitive workloads. Thus, employees who skipped their rest breaks chose to do so rather than being forced to. Defendant may even produce evidence that demonstrate that employees waived their right to take rest breaks at their

1 discretion. Finally, since rest breaks are not recorded like meal breaks, it will be difficult for Plaintiffs
2 to prove that employees were deprived of receiving compliant rest breaks. Therefore, Class Counsel
3 believes a seventy percent (70%) certification risk and sixty percent (60%) merits risk are warranted.

4 63. Class Counsel applies a sixty percent (60%) certification risk and additional
5 fifty percent (50%) merits risk based on the meal break theories. Like Defendant's rest break policy,
6 the meal break policy also supposedly failed to authorize and permit duty-free meal breaks up until
7 2020. Furthermore, Defendant would purportedly regularly assign heavy, time-sensitive workloads
8 and prohibited employees from taking meal breaks if they were in the middle of their work. This
9 allegedly forced employees to skip or take late meal breaks. Finally, even when employees received
10 their meal breaks, they were supposedly interrupted by work-related matters. But Class Counsel also
11 understands that there are difficulties with obtaining certification for meal breaks as well. Defendant
12 may produce evidence and testimony at trial to demonstrate that it was not aware that employees were
13 skipping, cutting short, or taking late meal breaks. This would mean that employees chose to forsake
14 receiving compliant meal breaks rather than being pressured to do so by their workloads. Plaintiffs
15 would also have to undertake the arduous task of obtaining declarations from putative class members
16 to show the existence of improper, uniform practices involving meal breaks. Finally, Defendant can
17 introduce testimony to show that employees were free to leave the work premises during their meal
18 breaks. Consequently, Class Counsel believes this justifies a sixty percent (60%) certification risk and
19 additional fifty percent (50%) merits risk.

20 64. As for unpaid wages involving off-the-clock work, including overtime work,
21 Class Counsel applies a sixty percent (60%) certification risk and another sixty percent risk on the
22 merits. Plaintiffs contend that Defendant's policies operated to pressure employees to work additional
23 hours off-the-clock without asking for compensation out of fear of disciplinary action. Employees
24 were also allegedly forced to continue working after completing their shifts and clocking out but
25 refrain from recording their hours in a way that would entitle them to overtime pay. Finally, despite
26 Defendant purportedly expecting employees to be on-call, it only compensated employees when a call
27 from a student came in. However, Defendant could bring in evidence and testimony at trial to show to
28 its policies were never intended to force employees to work off-the-clock. Instead, employees who

1 worked additional hours off-the-clock chose to do so, meaning employees also chose not to report
2 these hours for compensation. Next, Defendant can introduce testimony to show that it never deterred
3 employees from recording their hours in a way that would downplay their entitlement to overtime pay.
4 Finally, Defendant can produce evidence to reveal that only a small percentage of employees were
5 expected to be on-call for which they were properly compensated. Thus, Class Counsel applies a sixty
6 percent (60%) certification risk and another sixty percent (60%) risk on the merits.

7 65. Furthermore, Class Counsel believes a forty percent (40%) certification risk and
8 seventy percent (70%) merits risk for unreimbursed business expenses is warranted. Defendant
9 allegedly expected employees to use their personal cell phones and personal vehicles for various
10 business-related expenses (*i.e.*, driving to jobsites, communicating with supervisors and managers).
11 Yet, Defendant supposedly failed to reimburse employees for these expenses. Defendant’s policies
12 even purportedly show a general reluctance to reimburse employees. However, Defendant can produce
13 evidence and testimony at trial to show that only a small number of employees were expected to use
14 their personal cell phones and personal vehicles. Defendant could even demonstrate that such
15 employees who used their personal cell phones and personal vehicles were accordingly reimbursed.
16 Finally, Defendant may bring in testimony to show that if employees were not reimbursed, it was
17 because they failed to ask Defendant for a reimbursement. Therefore, Class Counsel believes this
18 warrants a forty percent (40%) certification risk and seventy percent (70%) merits risk.

19 66. Next, Plaintiffs’ Labor Code section 203 claim for waiting time penalties is
20 based on Plaintiffs’ claims for unpaid overtime, time worked off-the-clock, and missed rest and meal
21 breaks. If Plaintiffs prevail on these underlying claims, it will lead to waiting time penalties. However,
22 Defendant may argue that any failure to pay wages due and owing to employees in a timely manner
23 was not “willful” under section 203 and was instead an honest mistake made in good faith. For these
24 reasons and the reasons explained in the previous sections, Class Counsel believes a fifty percent
25 (50%) certification risk and fifty percent (50%) merits risk are justified.

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1 67. Finally, Plaintiffs’ Labor Code section 226(a) claim for wage statement
2 penalties is based on Defendant’s failure to maintain accurate records. As stated above, employees
3 were supposedly pressured to work additional hours off-the-clock without asking for compensation.
4 Employees were also allegedly not paid premium wages for noncompliant meal and rest breaks.
5 Collectively, this subsequently resulted in Defendant issuing wage statements that failed to accurately
6 state the numbers of hours worked and all applicable hourly rates. But Defendant’s error likely did not
7 affect all employees. Additionally, Defendant may argue that its failure to provide accurate wage
8 statements was not “knowing and intentional” under section 226(a). Thus, Class Counsel believes a
9 fifty percent (50%) certification risk and fifty percent (50%) merits risk are warranted.

10 68. Based on this analysis, the realistic recovery for this case is \$1,165,794.29 on
11 the low end and \$1,238,573.36 on the high end. The Gross Settlement Amount of \$2,000,000 is
12 approximately thirty-two percent (32.81%) of the maximum potential exposure and is approximately
13 one hundred sixty-one percent (161.48%) of the maximum realistic exposure at trial, which is an
14 excellent settlement.

15 69. The proposed Class is ascertainable and numerous as to make it impracticable to
16 join all Class Members, and there are common questions of law and fact that predominate over any
17 questions affecting any individual Class Member. Plaintiffs’ claims are typical of the claims of the
18 Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Also,
19 the prosecution of separate actions by individual Class Members would create the risk of inconsistent
20 or varying adjudications, and a class action is superior to other available means for the fair and
21 efficient adjudication of the case. As discussed below, this case is amenable to class certification.

22 70. The Class Action involves seven hundred thirty-one (731) Class Members.
23 Thus, the Class is sufficiently numerous.⁵ Further, all Class Members can and will be identified by
24 Defendant to the Settlement Administrator through a review of Defendant’s employment records
25 concerning hourly-paid and non-exempt employees employed by Defendant within the State of
26 California during the Class Period.

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28 ⁵ (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous).)

1 71. Plaintiffs assert that common issues of fact and law predominate as to each of
2 the claims alleged by Plaintiffs. All hourly-paid and non-exempt employees who worked for
3 Defendant during the Class Period were subject to the same or similar employment practices, policies,
4 and procedures. All Plaintiffs' claims surround Defendant's common practice and scheme of failing to
5 maintain compliant meal and rest break policies and practices, failing to reimburse business expenses,
6 and failing to fully and properly compensate employees, *inter alia*, for noncompliant rest and meal
7 breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties.

8 72. Plaintiffs were non-exempt employees and allege they and the Class Members
9 were employed by the same company and injured by Defendant's common policies and practices
10 related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid
11 final wages, inaccurate wage statements, and unreimbursed business expenses. Plaintiffs seek relief for
12 these claims and derivative claims on behalf of all Class Members. Thus, Plaintiffs' claims arise from
13 the same employment practices and are based on the same legal theories as those applicable to the
14 other Class Members.

15 73. Plaintiffs have proven to be an adequate Class Representatives. They have
16 conducted themselves diligently and responsibly in representing the Class in this litigation, understand
17 their fiduciary obligations, and have actively participated in the prosecution of this case. Plaintiffs
18 have also spent time in meetings and conferences with counsel to provide counsel with a complete
19 understanding of their work environment and requirements. Furthermore, Plaintiffs do not have any
20 interest that is adverse to the interest of other Class Members.

21 74. The proposed Settlement is the product of serious, informed, non-collusive
22 negotiations, has no obvious defects, does not improperly grant preferential treatment to the Class
23 Representatives or segments of the Class, and falls within the range of fair and reasonable settlements.
24 I believe that this non-reversionary settlement is in the best interests of the Class as fair, reasonable,
25 and adequate. Therefore, I recommend approval of the Settlement.

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1 75. The Settlement calls for the payment of up to \$760,000 for the Attorney Fee
2 Award. This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial
3 work they have put into this case and, moreover, the risk they assumed by taking it in the first place. I
4 have practiced law in Southern California since December of 2004, with most of my time focused
5 solely on the prosecution of employment and wage and hour class action litigation. I am aware that the
6 common and acceptable rate for contingency representation in wage and hour class action litigation is
7 normally forty percent (40%) before trial, with the range being from thirty-three and one-third percent
8 (33.3%) up to fifty percent (50%).

9 76. The Attorney Fee Award is intended to reimburse Class Counsel for all
10 uncompensated work that they have already done and for all the work they will continue to do in
11 carrying out and overseeing the notification of the Class Members, communication with Class
12 Members regarding the proposed Settlement, and administration of the Settlement if the Settlement is
13 preliminarily approved.

14 77. Class Counsel took this case on a contingent fee basis against a business
15 represented by a reputable defense firm. When we take contingent fee-based cases, we must pay
16 careful attention to the economics involved. Accordingly, when taking these cases, we anticipate that
17 we shall, if successful, receive a fee that exceeds our normal hourly rate; otherwise, the risk is often
18 too great to bear. Even when we work long hours, the number of hours in a day is limited. Therefore,
19 when we take on one matter, we are unable to take on other matters. When Class Counsel became
20 involved in this case, we realized the time commitment that it would entail, and we were forced to turn
21 down matters that we otherwise could have handled. We were forced to do so because of the thorough
22 factual investigation and development this case required. In sum, this case claimed a significant
23 portion of Class Counsel's time and attention throughout its pendency.

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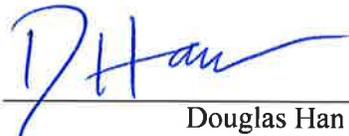
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78. The requested fee is reasonable for the services provided to Participating Class Members and for the benefits they will receive.

I declare under penalty of perjury under the laws of the California that the foregoing is true and correct. Executed on this 26th day of July 2021, at Pasadena, California.



Douglas Han

EXHIBIT 1

Case Name	Court	Case Number	Judge
Jamie Contreras v. Stueve's Milk Transport, Inc.	San Bernardino County Superior Court	CIVDS1304440	David Cohn
Art Kelly et al. v. Barker Management, Inc.	Los Angeles County Superior Court	BC506120	Kenneth Freeman
Patrick Arellano v. Tolt, LLC; Tolt Service Group, Inc.	Los Angeles County Superior Court	BC512644	Amy Hogue
Derya Keles et al. v. The Art of Shaving-FL, LLC	Alameda County Superior Court	RG13687151	Wynne Carville
Marc Newman v. Hyder & Company	San Diego County Superior Court	37-2013-00051617-CU-OE-CTL	John Meyer
Abigail Stahl v. Fred Leeds Properties, Inc.	Los Angeles County Superior Court	BC509716	John Wiley, Jr.
Johnny Esters et al. v. HBD LTD, Limited Partnership	Kern County Superior Court	S-1500-CV-279879 DRL	David Lampe
Brian Davidson et al. v. Lentz Construction General Engineering Contractor, Inc.	Kern County Superior Court	S-1500-CV-279842-LHB	Lorna Brumfield
Lindsay Griffiths v. Paper Source, Inc.	Los Angeles County Superior Court	BC506121	William Highberger
Gabriel Betancourt v. Hugo Boss USA	Los Angeles County Superior Court	BC506988	Kenneth Freeman
Stephen McDougale et al. v. Ensign Drilling Company (California), Inc.	Kern County Superior Court	S-1500-CV-279842-LHB	Lorna Brumfield
Cody Pierce v. Progress Rail Services Corporation	Kern County Superior Court	S-1500-CV-282596	David Lampe
Michael Weston et al. v. Helmerich & Payne International Drilling Co.	Kern County Superior Court	1500 CV279549	David Lampe
Rod Rodriguez v. B&L Casing Service, LLC	Kern County Superior Court	S-1500-CV-282709-DRL	David Lampe
Jose Duval et al. v. DBI Beverage, Inc.	Santa Clara County Superior Court	1-14-CV-266154	Peter Kirwan
Pamela Van Goey v. Pro's Choice Beauty Care, Inc.	Los Angeles County Superior Court	BC545400	John Wiley, Jr.
Michael Peterson v. T-J Roofing Co., Inc (Baker Roofing)	San Joaquin County Superior Court	39-2014-00316043-CU-OE-STK	Barbara Kronlund
Ilya Zaydenburg et al. v. Crocs Retail, Inc.	Los Angeles County Superior Court	BC554214	John Wiley, Jr.
Jeff Hartzell et al. v. Truitt Oil Field Maintenance Corporation	Kern County Superior Court	S-1500-CV-283011-DRL	David Lampe
Nickolus Blevins v. Watkins Construction Co., Inc.	Kern County Superior Court	S-1500-CV-283079-LHB	Lorna Brumfield
Jennifer Ailey et al. v. Restoration Hardware, Inc.	Los Angeles County Superior Court	JCCP4794	William Highberger
Mario Navarro-Sales et al. v. Markstein Beverage Co.	Sacramento County Superior Court	34-2015-00174957	Alan Perkins
Jason Novak v. Midlands Management Corporation; Midlands Claim Administrators	Los Angeles County Superior Court	BC56702	Ann Jones
Oscar Pina v. Zim Industries, Inc. dba Bakersfield Well & Pump	Kern County Superior Court	S-1500-CV-284498-SPC	Sidney Chapin
David W. White et al. v. Pilot Travel Centers LLC	San Joaquin County Superior Court	39-2013-00301569-CU-OE-STK	Linda Lofthus
Kristin Hollinger et al. v. Safety Management Systems, LLC	Kern County Superior Court	S-1500-CV-284499-DRL	David Lampe
Michelle Ross et al. v. Southern State Insurance (Alsmadi)	Los Angeles County Superior Court	BC507217	Kenneth Freeman
Simone Blattler et al. v. Kate Spade & Company	Los Angeles County Superior Court	BC521256	Kenneth Freeman
Melba Hynick v. AmeriFirst Financial, Inc.	Los Angeles County Superior Court	BC573246	Lisa Hart Cole
Evelyn Antoine v. Rivertone Residential CA, Inc. dba Riverstone Residential Group	Sacramento County Superior Court	34-2013-00155974	Alan Perkins
Lesly Chavez et al. v. East West Bank	San Francisco County Superior Court	CJC-13-004839	Curtis Karnow
John Kim v. Hanmi Bank	Los Angeles County Superior Court	BC534578	Elihu Berle
Nickolous Blevins v. Republic Refrigeration, Inc.	Los Angeles County Superior Court	BC579924	Elihu Berle
Melba Hynick et al. v. International City Mortgage, Inc.	San Bernardino County Superior Court	CIVDS1502516	Keith Davis
Jose Contreas v. Towne Center Property Management, Inc.	Los Angeles County Superior Court	BC513621	Ann Jones
Cody Pierce et al. v. Robert Heely Construction, LP	Kern County Superior Court	S-1500-CV-282474-LHB	Lorna Brumfield
Terry Tauchman v. Outerwall, Inc. aka Coinstar, Inc.	Sacramento County Superior Court	34-2013-00154815	Alan Perkins
Sherrie Ward et al. v. Amazon Processing, LLC dba Appstar Financial	San Diego County Superior Court	37-2015-00012522-CU-OE-CTL	Timothy Taylor
Karen McKinnon et al. v. Renovate America, Inc.	San Diego County Superior Court	37-2015-00038150-CU-OE-CTL	John Meyer
Mark Aceves et al. v. Cambro Manufacturing Company	Orange County Superior Court	30-2015-00810013-CU-OE-CXC	Glenda Sanders
Kevin Marking v. Randy's Trucking, Inc.	Kern County Superior Court	BCV-15-100180-TSC	Thomas Clark
Daniel Saiyasit et al. v. Saccani Distributing Company	Sacramento County Superior Court	34-2015-00187440	Raymond Cadei
Michael Emerson et al. v. Ganahl Lumber Company	Orange County Superior Court	30-2014-00747750-CU-OE-CXC	Kim Dunning
Jose Salas v. Clean Harbor Environmental Services, Inc.	Kern County Superior Court	BCV-15-100187DRL	David Lampe
Edwin Murillo v. W.A. Thompson, Inc	Kern County Superior Court	BCV-16-101994	Sidney Chapin
Tyrone Windham et al. v. T.F. Louderback, Inc. dba Bay Area Beverage Company	Contra Costa County Superior Court	CIVMSC16-00861	Barry Goode
Derrick Lankford v. Roseburg Forest Products Co.	Los Angeles County Superior Court	BC603618	Ann Jones
Alejandro Hernandez v. Crest Beverage, LLC	San Diego County Superior Court	37-2015-00039163-CU-OE-CTL	Katherine Bacal
Martin Gonzalez v. Matagrano Inc.	San Francisco County Superior Court	CGC-16-550494	Curtis Karnow

Malachi Smith et al. v. Marketstar Corporation	Alameda County Superior Court	JCCP004820	George Hernandez
Justin Dougherty v. Redbox Automated Retail, LLC	Los Angeles County Superior Court	BC544841	Maren Nelson
Edgardo Madrigal et al. v. Couch Distributing Company, Inc.	Santa Cruz County Superior Court	15-CV-00439	Paul Burdick
Rodney Hoffman v. Blattner Energy Inc.	United States District Court of Central California	ED CV 14-2195-DMG (DTBx)	Dolly Gee
Ruben Amaya v. Apex Merchant Group, LLC dba Express Processing	Sacramento County Superior Court	34-2015-00186623-CU-OE-GDS	Steven Rodda
Eduardo De La Torre et al. v. Acuity Brands Lighting, Inc.	San Bernardino County Superior Court	CIVDS1601800	Donna Gunnell Garza
Carlos Ramirez v. Mashburn Transportation Services, Inc.	Kern County Superior Court	BCV-15-100591-SPC	Stephen Schuett
Dennis Carr et al. v. American Security Products Company	San Bernardino County Superior Court	CIVDS1606769	Wilfred Schneider, Jr.
Shane Burke v. Petrol Production Supply, Inc.	Kern County Superior Court	BCV-15-101092-SPC	Stephen Schuett
Sam John et al. v. Rival Well Services Incorporated	Kern County Superior Court	BCV-15-100504-SPC	Stephen Schuett
Tanya Orosco v. Visionary Home Builders of California	Sacramento County Superior Court	34-2017-00210368-CU-OE-GDS	Christopher Krueger
Eric Savage et al. v. Regus Management Group, LLC	Los Angeles County Superior Court	BC498401	Elihu Berle
Adalberto Chavana v. Golden Empire Equipment, Inc.	Kern County Superior Court	BCV-16-102796-DRL	David Lampe
Jeff Prince v. Ponder Environmental Services, Inc.	Kern County Superior Court	BCV-16-100784-DRL	David Lampe
Fernando Mondragon et al. v. Oldenkamp Trucking, Inc.	Kern County Superior Court	BCV-16-102399	Stephen Schuett
John Steele et al. v. Delta Sierra Beverage, LLC	Sacramento County Superior Court	34-2017-00206727	Alan Perkins
Araceli Vazquez et al. v. Academy Mortgage Corporation	Sacramento County Superior Court	34-2016-00191285-CU-OE-GDS	Kevin Culhane
Nabor Navarro v. Trans-West Intermodal, Inc.	San Bernardino County Superior Court	CIVDS1700850	Brian McCarville
David Dobbs v. Wood Group PSN, Inc.	Kern County Superior Court	BCV-16-101078-DRL	David Lampe
Keith Lacy v. Azuma Foods International, Inc., USA	Alameda County Superior Court	RG16827402	Winifred Smith
Julio Ceron et al. v. Hyrdo Resources-West, Inc.	Kern County Superior Court	BCV-15-101461	Stephen Schuett
Antonio Calderon v. BKB Construction, LP	Kern County Superior Court	BCV-17-102154-DRL	David Lampe
Silvia Harbabikian et al. v. Williston Financial Group, LLC	Ventura County Superior Court	56-2016-00485186-CU-OE-VTA	Kent Kellegrew
Alex Vega et al. v. Advance Beverage Co., Inc.	Kern County Superior Court	BCV-16-100848-DRL	David Lampe
Emmanuel Villarin v. BHFC Operating LLC dba Bottega Louie	Los Angeles County Superior Court	BC616136	Carolyn Kuhl
Milton Krisher et al. v. General Production Service of California, Inc.	Kern County Superior Court	BCV-15-100795	David Lampe
Steve Stuck v. Jerry Melton & Sons Construction, Inc.	Kern County Superior Court	BCV-16-101516-DRL	David Lampe
Caryn Rafferty et al. v. Academy Mortgage Corporation	Sacramento County Superior Court	34-2016-00191285-CU-OE-GDS	David Brown
Carrie Baker v. Central Coast Home Health	San Luis Obispo County Superior Court	17CV-0219	Tana Coates
Jamar Farmer v. Cooks Collision, Inc.	Napa County Superior Court	17CV000969	Diane Price
Alvin Hayes et al. v. Advanced Drainage Systems, Inc.	Kern County Superior Court	BCV-17-101019	Stephen Schuett
Carlos Ramirez v. Crestwood Operations LLC	Kern County Superior Court	BCV-17-100503	David Lampe
Belen Torrez v. Freedom Mortgage Corporation	San Bernardino County Superior Court	CIVDS1709351	David Cohn
Nickolous Blevins v. California Commercial Solar, Inc.	Kern County Superior Court	BCV-17-199571	Stephen Schuett
Ricardo Ortega et al. v. Nestle Waters North America, Inc.	Los Angeles County Superior Court	BC623610	Carolyn Kuhl
Marco Reyes v. Halliburton Energy Services, Inc.	Kern County Superior Court	S-1500-CV-280215-SDS	Stephen Schuett
Dennis Carr v. So-Cal Structural Steel Fabrication, Inc.	San Bernardino County Superior Court	CIVDS1605828	Thomas Garza
Dois Sides et al. v. S.A. Camp Pump Company	Kern County Superior Court	BCV-16-100219-DRL	David Lampe
Javier Cisneros et al. v. Wilbur-Ellis Company LLC	Kern County Superior Court	BCV-17-102836-DRL	David Lampe
Landon Fulmer, Jr. et al. v. Golden State Drilling, Inc.	Kern County Superior Court	S-1500-CV0279707-SDS	Stephen Schuett
Alejandro Hernandez v. NUCO2 Management, LLC	Kern County Superior Court	BCV-17-102571-SDS	Stephen Schuett
Carlos McCollum et al. v. Delta Tech Service, Inc.	Solano County Superior Court	FCS049504	Scott Daniels
Juan Garcia et al. v. Straub Distributing Company, LTD	Kern County Superior Court	BCV-18-100377-DRL	David Lampe
Hal Weinshank et al. v. Freedom Mortgage Corporation	Sacramento County Superior Court	34-2018-00229068	David Brown
Carl Morel et al. v. Aseptic Solutions USA Ventures, LLC	Riverside County Superior Court	RIC1711383	Craig Riemer
Bridgette Guzman v. CrossCountry Mortgage, Inc.	San Diego County Superior Court	37-2017-00050474-CU-OE-CTL	Richard Whitney
Jose Castillo v. Gabriel I. Cruz dba GIC Transport Inc.	Kern County Superior Court	BCV-17-101807-DRL	Thomas Clark
Maximo Garcia et al. v. Glide Rite	Los Angeles County Superior Court	BC665485	William Highberger
Marie Hernandez v. Starbucks Corporation dba Teavana	Ventura County Superior Court	56-2017-00497449-CU-OE-VTA	Matthew Guasco
Talia Turner et al. v. Alliance Residential, LLC	Sacramento County Superior Court	34-2016-00199504-CU-OE-GDS	Alan Perkins

Genio Chuen v. 911 Mobile Mechanic, LLC	Orange County Superior Court	30-2017-00943421-CU-OE-CXC	Glenda Sanders
Elbern Gentry v. Eugene Burger Management Corporation	Sacramento County Superior Court	34-2015-00182515-CU-OE-GDS	David Brown
Daniel Lee v. Westside Habitats, LLC	Los Angeles County Superior Court	BC702296	Elihu Berle
Victor Felix v. Remedial Transportation Services, Inc.	Kern County Superior Court	BCV-18-102595	David R. Lampe
Amy Lustig v. Skyline Financial Corporation	Los Angeles County Superior Court	JCCP4929	Daniel Buckley
Maurice Bunche et al. v. Mettler-Toledo Rainin, LLC	Alameda County Superior Court	RG18899279	Winifred Smith
Richard Valencia v. Hill Phoenix, Inc.	San Bernardino County Superior Court	CIVDS1715125	David Cohn
Annie Ayala v. Cherry Creek Mortgage Co., Inc.	San Bernardino County Superior Court	CIVDS1813616	David Cohn
Melissa Paez v. C&R Restaurant Group, LP	Kern County Superior Court	BCV-18-103171	Stephen Schuett
Johnie Honeycutt et al. v. California Sierra Express, Inc.	Sarremonto County Superior Court	34-2017-00210723	David Brown
Jimmy Alexander v. Republic Services, Inc.	Kern County Superior Court	BCV-18-102520-DRL	David Lampe
Jose Garcia v. Hronis, Inc	Kern County Superior Court	BCV-18-101510	David Lampe
Carlos Koreisz et al. v. On Q Financial, Inc	Ventura County Superior Court	56-2018-00511 126-CU-OE-VTA	Mark Borrell
Jason Manas et al. v. Kenai Drilling Limited	Los Angeles County Superior Court	BC546330	Daniel Buckley
Michelle Xiong et al. v. Hilltop Ranch, Inc.	Merced County Superior Court	18CV-01340	Brian McCabe
David Bibb v. Gazelle Transportation, LLC	Kern County Superior Court	BCV-18-103172-DRL	David Lampe
Israel Balderama v. Steeler, Inc.	Kern County Superior Court	BCV-18-102314-DRL	David Lampe
Donna Chavez v. Munchkin, Inc.	San Bernardino County Superior Court	CIVDS1829987	John Tomberlin
Julio Rodriguez v. Square-H Brands, Inc	Los Angeles County Superior Court	BC719423	Elihu Berle
Jose Godinez et al. v. Lazer Spot, Inc.	Kern County Superior Court	BCV-17-102721	Thomas Clark
Ratcliffe v. Gold Star Mortgage Financial Group	Orange County Superior Court	30-2017-00918768-CU-OE-CXC	Peter Wilson
Jose Duval v. Pacific States Petroleum, Inc.	Sacramento County Superior Court	34-2018-00231934, 34-2018-243	David Brown
Karen Morgan v. Childtime Childcare, Inc. (Federal)	United States District Court of Central California	8:17-cv-01641 AG (KESx)	Andrew Guilford
Alejandro Amador v. RMJV, LP dba Fresh Creative Foods	San Diego County Superior Court	37 -2018-00045893-CU-OE-NC	Jacqueline Stern
Georgeta Beldiman v. Universal Hospital Services, Inc.	Kern County Superior Court	BCV-18-102235-SDS	Stephen Schuett
Juan Sanchez v. Leon Krous Drilling, Inc.	Los Angeles County Superior Court	BC705069	William Highberger
Araz Parseghian et al. v. Homestreet Bank	Sacramento County Superior Court	34-2018-00241855-CU-OE-GDS	David Brown
Jose Garcia v. Pacific Coast Supply, LLC	Sacramento County Superior Court	30-2019-00247748-CU-OE-GDS	David Brown
Carl Powell et al. v. West Coast Casing, LLC	Kern County Superior Court	BCV-15-100277-DRL	David R. Lampe
Daniel Flores v. Wilmar Oils & Fats (Stockton), LLC	San Joaquin County Superior Court	STK-CV-UOE-2018-0012758	Barbara Kronlund
Rebecca Engle v. Indecomm Holdings, Inc. dba Indecomm Global Services	Los Angeles County Superior Court	19STCV10621	Barbara Meiers
Jordan Dahlberg et al. v. Fresno Beverage Company dba Valley Wide Beverage	Tulare County Superior Court	VCU279083	Bret Hillman
Kamada McDaniel v. Royal Cup, Inc.	Alameda County Superior Court	RG19001661	Brad Seligman
Steven Franklin v. Synergy One Lending, Inc.	Kern County Superior Court	BCV-20-100178-SDS	Stephen Schuett
Jorge Proctor v. Helena Agri Enterprises, LLC	San Diego County Superior Court	37-2018-00057894-CU-OE-CTL	Joel Wonnell
Mariano Martinez v. Community Playgrounds, Inc.	Solano County Superior Court	FCS053879	Bradley Nelson
Fabian Mayorag v. Sturgeon Services International, Inc.	Los Angeles County Superior Court	BC509717	Ann I. Jones
Christine Arman v. Circor Aerospace, Inc.	Riverside County Superior Court	RIC1613578	Sunshine Sykes
Liam Meyers et al v. Power Machinery Center	Kern County Superior Court	BCV-19-100897-DRL	David R. Lampe
Anthony Nuncio et al. v. MMI Services, Inc.	Kern County Superior Court	S-1500-CV-282534-DRL	David R. Lampe
Imelda De Vega v. Baxter Healthcare Corporation	Merced County Superior Court	20CV-00782	Brian McCabe
Mario R. Guerrero et al. v. Plaza Home Mortgage, Inc.	Imperial County Superior Court	ECU001150	L. Brooks Anderholt
Marcel Harrington et al. v. Arlon Graphics, LLC	Orange County Superior Court	30-2018-00970444-CU-OE-CXC	Peter Wilson
Daishun Luckett v. King's Hawaiian Bakery West, Inc. et al.	Los Angeles County Superior Court	19TRCV00761	Gary Y. Tanaka
Harry Noriesta v. Konica Minolta Business Solutions U.S.A., Inc.	United States District Court of Central California	EDCV 19-620-JGB (KKx)	Jesus G. Bernal
Rance Lewis v. Environmental Waste Minimization, Inc.	Kern County Superior Court	BCV-19-102248-SDS	Stephen Schuett
Juan Olivas et al. v. VCI Construction, LLC	Kern County Superior Court	BCV-20-100512-SDS	Stephen Schuett
Luis Ross et al. v. Cardinal Financial Company L.P.	Orange County Superior Court	30-2018-00998757-CU-OE-CXC	William Claster
Jonathan McAllister et al. v. La Tortilla Factory, Inc.	Sonoma County Superior Court	SCV-263220	Gary Nadler
Mansour Nije v. Lucira Health, Inc. f/k/a Diassess, Inc.	Alameda County Superior Court	RG20055890	Julia A. Spain
Byron Woods et al. v. Johanson Dielectrics, Inc.	Los Angeles County Superior Court	19STC11487	Maren Nelson

Harry Noriesta v. Konica Minolta Business Solutions U.S.A., Inc.	Merced County Superior Court	20CV-01183	Brian McCabe
Guy Beaudoin et al. v. Weststar Transportation, Inc.	Kern County Superior Court	BCV-18-101045	David R. Lampe
Josh Spier et al. v. Gibbs International, Inc.	Kern County Superior Court	BCV-19-101774-DRL	David R. Lampe
Raynisha Buntun et al. v. 1st Class Staffing et al.	San Joaquin County Superior Court	STK-CV-UOE-2018-15239	Geoge J. Abdallah
Sovann Touch v. Presidio Components	Kern County Superior Court	BCV-20-101005	David R. Lampe
Thomas Cuen v. Patriot Environmental Services, Inc.	Kern County Superior Court	BCV-18-102851	David R. Lampe
Justin Janis et al. v. United Rentals (North America), Inc.	Kern County Superior Court	BCV-19-102692	David R. Lampe
Jeff Borghi v. Goldco Direct LLC dba Goldco Precious Metals	Ventura County Superior Court	56-2019-00533053-CU-OE-VTA	Jeffery G. Bennet
John Kula v. Markem-Image Corporation	San Bernardino County Superior Court	CIVDS1911687	Bryan F. Foster
Joseph Garza v. CIG Logistics (Continental Intermodal Group)	Kern County Superior Court	BCV-19-102776-SDS	Stephen Schuett
Robin Arnold v. Guranteed Rate, Inc.	Ventura County Superior Court	56-2019-00523081-CU-OE-VTA	Jeffery G. Bennet
Erica Corona et al. v. Property West, Inc.	San Diego County Superior Court	37-2017-00028103-CU-OE-CTL	Ronald F. Frazier
Tyler Arciniega et al. v. Ony Glo, Inc. dba Mortgage Bankers	San Bernardino County Superior Court	CIVDS1901760	Brian S. McCarville
AnnMarie Albanez v. Bank of Hope	Los Angeles County Superior Court	19STCV30577	Rafael A. Onkeko
Ernesto Perez v. Tri-Star Deying and Finishing, Inc.	Los Angeles County Superior Court	BC649292	Carolyn Kuhl
Kelly Lomeland v. Consolidated Fire Protection	Orange County Superior Court	30-2019-01056877-CU-OE-CXC	Glenda Sanders
Patricial Alcantar et al v. Bay Equity, LLC	Marin County Superior Court	CIV1903376	James Chou
Edward Cardenas v. Point Mortgage Corporation	San Diego County Superior Court	37-2018-00036627-CU-OE-CTL	Ronald F. Frazier
Efrain Perez v. Freedom Medical, Inc.	San Bernardino County Superior Court	CIVDS1903517	Bryan F. Foster
Justin Tourchette v. Finelite, Inc.	Alameda County Superior Court	RG19022885	Frank Roesch
Nathan Priess v. Fiore Management, LLC	Kern County Superior Court	BCV-20-100930-DRL	David R. Lampe
Paul Svinth v. Wastequip Manufacturing Company, LLC	Kern County Superior Court	BCV-17-102143-DRL	David R. Lampe
Marisol Coronado v. Adventist Health Medical Center Tehachapi et al.	Kern County Superior Court	BCV-19-102644	David R. Lampe
Beverly Saolom v. Pulmonox Corporation	San Mateo County Superior Court	19-CIV-05070	Nancy Fineman
Rodney Bianco et al. v. Fujitsu America, Inc.	Los Angeles County Superior Court	18STCV00254	Daniel Buckley
Alejandro Pichardon v. American Financial Network	Orange County Superior Court	30-2016-00880472-CU-OE-CXC	William Claster
Mark Barnes v. American Financial Network	Orange County Superior Court	30-2017-00921175-CU-OE-CXC	William Claster
Edgar Sanchez v. Sunpower Corporation	Kern County Superior Court	BCV-18-102563-SDS	Stephen Schuett
Keith Lacy v. Agro Merchants Oakland, LLC	Alameda County Superior Court	RG18909127	Brad Seligman
Joseph B. Williams v. Good Health, Inc. et al.	Los Angeles County Superior Court	19STCV14944	Elihu M. Berle
Matthew Tucker v. BYD Coach & Bus, LLC	Los Angeles County Superior Court	BC698921	Amy Hogue
Jamie Garcia v. Argo Chemical, Inc.	Kern County Superior Court	BCV-18-102162	David R. Lampe
Cindy Johnson et al. v. Summit Funding, Inc.	Sacramento County Superior Court	34-2018-00237292	Shama H. Mesiwala
Paul Zavala v. Donaghy Sales, LLC	Kern County Superior Court	BCV-20-102005	David R. Lampe
Rancho Foods adv. Pelayo	Los Angeles County Superior Court	20NWCV00359	Raul Sahagun
Joy Mathis v. Wintrust Mortgage a division of Barrington Bank & Trust Company N.A.	Los Angeles County Superior Court	18STCV01136	Amy Hogue
Jose Duval v. Dawson Oil Company	Sacramento County Superior Court	34-2020-00276862-CU-OE-GDS	Shama H. Mesiwala
Robin Edwards et al. v. Heartland Payment Systems, Inc.	Los Angeles County Superior Court	BC606083	Daniel Buckley
Cesar Martinez v. Blue Dot Safes Corporation	Los Angeles County Superior Court	19PSCV00618	Gloria White-Brown
Sasha Ellis v. UDR LP et al.	Orange County Superior Court	30-2018-01022710-CU-OE-CXC	William Claster

EXHIBIT 2

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement (“Agreement”) is between Named Plaintiffs Lanzell Smith and Rande McCormick (“Named Plaintiff(s)” or “Class Representatives”) individually and on behalf of the putative class of other allegedly similarly situated individuals (the “Class” as defined below) (collectively “Plaintiffs”) and Defendant American Campus Communities Services, Inc. (“Defendant”). Plaintiffs and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs**: The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$13,000, shall not exceed \$15,000. All Administration Costs shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award**: The amount, not to exceed 38% of the Gross Settlement Amount or \$760,000, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This Attorney Fee Award is subject to Court approval. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- D. **Case or Class Action**: The First Amended Complaint filed by Plaintiffs Lanzell Smith and Rande McCormick entitled *Lanzell Smith et al. v. American Campus Communities Services, Inc.*, Case No. 34-2020-00280934 in the State of California, Sacramento County Superior Court.
- E. **Class**: All current and former non-exempt employees of American Campus Communities Services, Inc. in California during the Class Period.
- F. **Class Counsel**: Douglas Han, Shunt Tatavos-Gharajeh, Arsine Grigoryan, and Phillip Song of Justice Law Corporation.
- G. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.

- H. Class Notice or Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- I. Class Period:** The time period from June 18, 2016, through August 6, 2021, or the date of Preliminary Approval, whichever date is earlier.
- J. Class Representatives or Named Plaintiffs:** Lanzell Smith and Rande McCormick.
- K. Class Representative Enhancement Payment:** The amount the Court awards to Plaintiffs Lanzell Smith and Rande McCormick for their services as a Class Representatives, which will not exceed \$10,000 each. These payments shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This enhancement is subject to approval of the Court. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- L. First Amended Complaint:** The First Amended Complaint filed by Plaintiffs Lanzell Smith and Rande McCormick in the case entitled *Lanzell Smith et al. v. American Campus Communities Services, Inc.*, Case No. 34-2020-00280934 in the State of California, Sacramento County Superior Court.
- M. Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs, which shall not exceed \$25,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant. The Cost Award is subject to Court approval. If the Court awards less than the amount request, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
- N. Counsel for Defendant:** Attorneys Peter Z. Stockburger and Leanna M. Anderson of Dentons US LLP
- O. Court:** The State of California, Sacramento County Superior Court.
- P. Defendant:** American Campus Communities Services, Inc.
- Q. Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed or moved to be set aside, or, if there are no objectors and no Plaintiffs in intervention at the time the Court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.
- R. Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA payment shall consist of all current and former non-exempt employees

who worked for American Campus Communities Services, Inc. within the State of California between May 28, 2019, through August 6, 2021, or Preliminary Approval Date, whichever date is earlier (“PAGA Timeframe”). Eligible Aggrieved Employees may not object to or request to be excluded from the PAGA portion of the settlement.

- S. **Exclusion Form**: The Election Not To Participate or Opt-out Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval. Class members and Aggrieved employees may not request exclusion or opt out of the PAGA portion of the settlement.

- T. **Judgment or Final Approval**: The final order entered by the Court finally approving this Agreement.

- U. **Gross Settlement Amount or GSA**: The total value of the Settlement is a non-reversionary Two Million Dollars (\$2,000,000). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Enhancement payment paid to the Class Representatives, as approved by the Court; (4) Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court. Defendant’s portion of payroll taxes on the wage portion of the Class Members’ Individual Settlement Payment shall be a separate obligation from the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant for any reason.

- V. **Individual Settlement Share(s)**: The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Settlement Share automatically, without the return of a claim form.

- W. **LWDA**: California Labor and Workforce Development Agency.

- X. **Net Settlement Amount or NSA**: The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancements, PAGA Payment paid to the LWDA and Eligible Aggrieved Employees, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Class Members who do not request exclusion from the Settlement.

- Y. PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- Z. PAGA Payment:** The PAGA Payment consists of \$150,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties claim as alleged in the Class Action. Seventy-five percent (75%) of the PAGA Payment (\$112,500) shall be paid to the LWDA, and twenty-five percent (25%) (\$37,500) of the PAGA Payment shall be part of the Net Settlement Amount distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- AA. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
- BB. Parties:** Plaintiffs Lanzell Smith and Rande McCormick as individuals, Class Representatives, PAGA Representatives; the Class; and Defendant American Campus Communities Services, Inc.
- CC. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- DD. Qualified Settlement Fund or OSF:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 *et seq.*, that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiffs and Class Counsel.
- EE. Released Claims:** As of the Effective Final Settlement Date, claims to be released by the Class Members include any and all claims under state, or local law, whether statutory or common law arising out of the claims pleaded in the First Amended Complaint and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the First Amended Complaint for: (1) failure to pay regular and overtime wages under state law; (2) failing to maintain and provide accurate time records and wage statements; (3) failure to pay minimum wage; (4) failure to timely pay final wages; (5) waiting time penalties; (6) failure to provide or pay for meal breaks; (7) failure to provide or pay for rest periods; (8) failure to pay sick pay at the regular rate of pay; (9) failure to reimburse business expenses; (10) statutory penalties under PAGA; and (11) violation of California's unfair competition law. The release only applies to periods of time when Class Members were members of the Class (*i.e.*, excluding periods of time in an exempt position).
- FF. Released Parties:** American Campus Communities Services, Inc. and any of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and any of those entities' respective partners,

shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims in the First Amended Complaint.

GG. Response Deadline: Forty-five (45) calendar days from the initial mailing of the Notice.

HH. Settlement Administration: The Settlement Administrator will mail the Notice by first class U.S. mail to all Class Members at the address Defendant has on file for those Class Members and to all former employee Class Members at the address resulting from the NCOA database search. The Notice will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive Notice after the steps outlined above have been taken will still be bound by the Settlement and/or Judgment.

II. Settlement Administrator: The third-party administrator agreed upon by Parties to administer this Settlement is CPT Group, Inc.

JJ. Superior Court: The State of California, Sacramento County Superior Court.

II. RECITALS

A. Prior to the Parties' mediation held on April 29, 2021, the Parties conducted significant investigation and discovery of the facts and law both before and after the initial Class Action was filed. Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying Class Members for all hours worked, meal and rest period policies, and payroll and operational policies. As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. Plaintiffs and Defendant also interviewed several of Class Members, and others, who worked for Defendant throughout the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis.

B. Benefits of Settlement to Class Members. Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel

have conducted extensive settlement negotiations, including formal mediation on April 29, 2021. Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

C. Defendant's Reasons for Settlement. Defendant recognizes that the defense of this litigation may be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.

D. Defendant's Denial of Wrongdoing. Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiffs can serve as an adequate Class Representatives. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.

E. Plaintiffs' Claims. Plaintiffs assert that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Named Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Named Plaintiffs, Class Members, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiffs and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

A. Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendant is obligated to pay under this Settlement Agreement is Two Million Dollars (\$2,000,000).

B. Notice to the Labor and Workforce Development Agency (“LWDA”). On May 28, 2020, Plaintiff Rande McCormick filed and served his Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3. Thus, Plaintiffs have satisfied their notice obligations under the PAGA.

C. Class Certification. Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement for the sole purposes of settling this matter. Should the Court not approve either the Class or PAGA portions of the settlement, no inference regarding the suitability for Class or PAGA treatment shall be taken from this Agreement.

D. Conditional Nature of Stipulation for Certification. The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification and liability.

E. Appointment of Class Representative. Solely for the purposes of this Settlement, the Parties stipulate and agree Named Plaintiffs shall be appointed as the representative for the Class.

F. Appointment of Class Counsel. Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.

G. Individual Settlement Share. Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member.

1. Individual Settlement Share Calculation.

Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked as a Class Member during the Class Period based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by any and all Class Members during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. A

partial week worked in a given week will be credited as a workweek for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked. The Claims Administrator will perform these calculations.

2. **Tax Withholdings.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80% interest, penalties, and reimbursements. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share.

H. Settlement Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator will make the following payments out of the Gross Settlement Amount:

1. **To the Named Plaintiffs (Lanzell Smith and Rande McCormick).** In addition to their respective Individual Settlement Shares, and subject to the Court's approval, Named Plaintiffs will receive up to Ten Thousand Dollars and Zero Cents each as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. An IRS Form 1099 will be issued to Named Plaintiffs with respect to their Class Representative Enhancement Payments. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payments, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Named Plaintiffs, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (38%) or \$760,000 of the GSA and a Cost Award not to exceed \$25,000. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an

annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to these payments. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

- 3. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and pay those amounts from the Gross Settlement Sum. The Settlement Administrator will submit Defendant's portion of payroll withholding tax and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.
- 4. To the Settlement Administrator.** The Settlement Administrator - CPT Group, Inc. will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$15,000. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 5. To Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members shall be made from the Qualified Settlement Fund.
- 6. To Eligible Aggrieved Employees.** The Settlement Administrator shall pay each eligible aggrieved employee according to their proportional share, which will be calculated and will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (i.e., the sum of all pay periods of employment for each eligible aggrieved employee), and dividing that number into the \$37,500

amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual eligible aggrieved employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share.

- I. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, and subject to Court approval, the Parties stipulate and agree that CPT Group, Inc. shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Notice to the putative Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and re-mailing Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating the employer portion of payroll tax to be separately paid by Defendant; calculating each Class Member's Individual Settlement Share; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; calculating and mailing the aggrieved employees Payment to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller in accordance with California Unclaimed Property Law, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in CPT Group, Inc. or otherwise have a relationship with CPT Group, Inc. that could create a conflict of interest.
- J. CIRCULAR 230 DISCLAIMER.** Each Party to this Agreement (for purposes of this section, the "Acknowledging Party" and each Party to this Agreement other than the Acknowledging Party, an "Other Party") acknowledges and agrees that:
- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
 - (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or

- disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

K. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a.** Plaintiffs will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice and Exclusion Form. Class counsel will submit to Defendant's counsel for approval drafts of the motion for conditional certification of the Class, Class Notice and Exclusion Form.
- b.** At the Preliminary Approval hearing, the Plaintiffs will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice and Exclusion Form; and setting the Final Approval hearing date and related filing deadlines.
- c.** Should the Court decline to conditionally certify the Class or to preliminarily approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. The Parties will, however, agree to work in good faith to renegotiate the terms of the Settlement in order to obtain preliminary approval from the Court. Although any amounts awarded as part of an Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall be separate from considering the reasonableness and appropriateness of the Settlement, any award of an Attorney Fee Award, Cost Award, Administrative Cost, and/or Class Representative Enhancement shall be contingent upon the Court giving preliminary and final approval of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement in and of itself, shall not operate to terminate or cancel this Settlement Agreement.

- 2. Notice to Class Members.** After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:
- a.** Within Thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: last known addresses, telephone numbers and/or emails to the extent they are available, and social security numbers and dates worked. (“Database”). If any or all of this information is unavailable to Defendant, Defendant will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will conduct a search of the National Change of Address Database (“NOCA”) for the address of all former Defendant employee Class Members. The Database shall be based on Defendant’s payroll, personnel, and other business records. The Settlement Administrator shall maintain the Database and all data contained within the Database as private and confidential other than to use it to effectuate the terms of this Settlement. The Settlement Administrator will maintain the Database in a commercially and reasonably secure manner, in accordance with applicable law.
 - b.** Within fourteen (14) calendar days after the Settlement Administrator’s receipt of the Database, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the NOCA search performed on all former Defendant employee Class Members.
 - c.** If a Class Notice is returned to the Settlement Administrator because of an incorrect address, within ten (10) calendar days from the Settlement Administrator’s receipt of the returned Class Notice, the Settlement Administrator will conduct a reasonable search for a more current address for the Class Member and re-mail the Class Notice to the Class Member if a more current address is identified. The Settlement Administrator will use the skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing

to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail, will have an additional ten (10) calendar days to postmark an Exclusion Form, or file, serve an objection to the Settlement, or dispute the days worked, consistent with the terms of this Agreement and the Class Notice and Exclusion Form. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed Class Notice.

- d.** Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of days to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will reasonably work together to make a final decision as to the number of eligible days that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled. If the Parties cannot make any such final decision for whatever reason, the Parties agree to reasonably work together to develop an alternative solution for determining the number of eligible days that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled, including but not limited to involvement by the Court where appropriate.
- e.** If any Exclusion Form received by the Settlement Administrator is incomplete or deficient, the Settlement Administrator shall immediately, and no later than five (5) calendar days upon receipt of the incomplete or deficient Exclusion Form, send a letter informing the Class Member of the incompleteness or deficiency and allow the Class Member fourteen (14) calendar days to provide the Settlement Administrator with a complete Class Notice or to cure the deficiency in the existing Class Notice. On the fifteenth (15th) calendar day following the expiration of the cure period, and if after the cure period the

Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.

- f. The Settlement Administrator shall provide a weekly status report to the Parties and their counsel of record. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Class Notices and Exclusion Forms mailed, the number of Class Notices and Exclusion Forms returned as undeliverable, the number of Class Notices and Exclusion Forms re-mailed, and the number of Exclusion Forms received.
 - g. No later than fourteen (14) calendar days after the Response Deadline set forth in the Class Notices and Exclusion Forms, the Settlement Administrator will serve on the Parties through their counsel of record a declaration of due diligence setting forth the Settlement Administrator's compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.
- 3. Objections to Settlement.** The Class Notice will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- a. **Format.** Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
 - b. **Notice of Intent to Appear.** Class Members who file objections to the Settlement may (though are not required to) appear at the Final Approval hearing, either in person or through the objector's own counsel.

4. Request for Exclusion from the Settlement (“Opt-Out”). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator an Exclusion Form. The Class Notice will also specifically inform all Class Members that Eligible Aggrieved Employees may not opt-out or request exclusion from the PAGA settlement. The written request for exclusion must: (a) include the Class Member’s name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member or his or her lawful representative; and (d) be postmarked no later than the Response Deadline.

a. Confirmation of Authenticity. If there is a question about the authenticity of a signed Exclusion Form, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely Exclusion Form will automatically be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.

b. Report. No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties and their counsel of record with a complete and accurate accounting of the number of Class Notices and Exclusion Forms mailed to Class Members, the number of Class Notices and Exclusion Forms returned as undeliverable, the number of Class Notices and Exclusion Forms re-mailed to Class Members, the number of re-mailed Class Notices and Exclusion Forms returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid Exclusion Forms, and the number of Class Members who returned invalid Exclusion Forms.

c. Defendant’s Option to Terminate. If more than ten percent (10%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void.

5. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a.** Class Counsel will file motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement; and (5) PAGA Payment. Class Counsel will also move the Court for and order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Class Members who do not opt out of the Settlement. These motions shall be unopposed by Defendant's counsel if the terms of this Agreement is met, particularly as to amounts. Class counsel will submit to Defendant's counsel for approval drafts of the motions and memorandums in support thereof for final approval of settlement in advance of filing.
- b.** If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, the Parties will negotiate in good faith to revise the Settlement. Upon mutual agreement between the Parties, the Parties may also withdraw from the Settlement, which along with this Agreement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- c.** Upon Final Approval of the Settlement, the Parties shall present to the Court a joint proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this

Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

7. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. The Parties agree, in such a situation, to work in good faith to modify the Settlement and continue their settlement discussions. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.

8. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond in a reasonable and timely manner to questions from Defendant's Counsel and Class Counsel.
 - a. **Funding the Settlement:** No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of Two Million Dollars (\$2,000,000) needed to pay the entire GSA by wiring the funds to the Settlement Administrator. In the event there are objectors to the Joint Stipulation and Settlement Agreement, payment shall be made within twenty-one (21) calendar days after the time to appeal has run or all appeals have been exhausted, whichever occurs later. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Share, to the extent it is within Defendant's possession.

 - b. **Disbursement:** Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment, and the Administration

Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant shall have no liability for PAGA claims by or on behalf of Participating Class Members during the Class Period, which are released under this Agreement.

c. QSF: The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

9. Uncashed Checks. Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred twenty (120) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next thirty (30) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 30-day period after mailing the reminder notice, the Settlement Administrator will, within one hundred fifty (150) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the California State Controller’s Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member will have his or her Individual Settlement Share available to him or her per the applicable claim procedure to request that money from the State of California.

10. Final Report by Settlement Administrator. Within ten (10) calendar days after the disbursement of all funds, the Settlement Administrator will serve on the Parties and their counsel of record a declaration providing a final report on the disbursements of all funds.

11. Defendant’s Legal Fees. Defendant is responsible for paying for all of Defendant’s own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

L. Release of Claims. As of the Effective Final Settlement Date, Class Members, who do not submit a timely and valid Exclusion Form hereby release, remise and forever discharge the Released Parties from the Released Claims for the Class

Periods. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims.

M. Release of PAGA Claims. As provided in the Release of Claims, as of the Effective Final Settlement Date, this settlement forever bars Named Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, from pursuing any action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, against, the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the Case.

N. Named Plaintiffs’ Release of Claims and General Release. As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Named Plaintiffs in their respective amounts, in recognition of their work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Named Plaintiffs hereby provides a general release of claims for themselves and their spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendant or the remuneration for, or termination of, such employment. This release includes, without limiting the generality of the foregoing: any and all claims, demands, causes of actions, obligations, charges, liabilities, attorneys’ fees, costs, actual, compensatory and punitive damages, and all claims for any other type of relief relating to, arising out of, or based upon: all claims of harassment, discrimination, and/or retaliation in violation of local, state or federal law; all claims for failure to prevent harassment, discrimination, and/or retaliation; all claims for failure to engage in the interactive process and/or to provide reasonable accommodation; all claims of violation of public policy, including a claim for wrongful and/or constructive termination of employment; all claims based on tort and/or breach of contract, whether written or oral, express or implied, and any covenant of good faith and fair dealing; all claims for misrepresentation, fraud, fraudulent inducement, detrimental reliance, and other similar claims; all claims for unpaid commissions, wages, or other benefits, including minimum wage, overtime, double time, vacation, associated penalties and/or premiums, and expense reimbursement; all claims for rest or meal periods and associated penalties and/or premiums; any claim for unlawful or unfair business practices; all claims for emotional distress; any and all claims which were or could have been asserted by Named Plaintiffs and all claims

generally relating to Named Plaintiffs' application for employment, alleged employment and the cessation thereof, including any alleged violation of any federal, state or other governmental statute, regulation, ordinance, or executive order, including without limitation:

- (a) The Civil Rights Acts of 1866, 1964, and 1991, as amended;
- (b) 42 U.S.C. § 1981;
- (c) The California Fair Employment and Housing Act;
- (d) Section 503 of the Rehabilitation Act of 1973;
- (e) The Fair Labor Standards Act (including the Equal Pay Act);
- (f) The California and United States Constitutions;
- (g) The California Labor Code;
- (h) The California Business and Professions Code;
- (i) The California Government Code;
- (j) The Employee Retirement Income Security Act, as amended;
- (k) The California Family Rights Act;
- (l) The Americans with Disabilities Act;
- (m) The Family Medical Leave Act;
- (n) The California Pregnancy Discrimination Act;
- (o) The California Wage Orders;
- (p) The National Labor Relations Act;
- (q) The Immigration Reform and Control Act;
- (r) The California Occupational Safety and Health Act, or the Federal equivalent;
- (s) The Worker Adjustment and Retraining Notification Act;
- (t) The Age Discrimination in Employment Act of 1967, as amended;
- (u) The Older Workers' Benefit Protection Act;
- (v) The California Whistleblower Protection Act;
- (w) The Fair Credit Reporting Act;
- (x) The California Consumer Credit Reporting Agencies Act;
- (y) The California Investigative Consumer Reporting Agencies Act; and
- (z) The Families First Coronavirus Response Act and similar local, state, and federal laws.

This Release in all respects has been voluntarily and knowingly executed with the express intention of effecting the legal consequences provided in the California Civil Code section 1542, that is, the extinguishment of obligations herein designated. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

If any claim is not subject to release, Named Plaintiffs waive any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

O. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Class Action, or that but for the Settlement, a Class should be certified in the Class Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiffs' and Defendant's willingness to settle the Class Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payments and/or Individual Settlement Shares paid to Named Plaintiffs and Participating Class Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Named Plaintiffs or the Participating Class Members. The Parties agree that any Class Representative Enhancements and/or Individual Settlement Shares paid to Named Plaintiffs or the Participating Class Members under the terms of this Agreement do not represent any modification of Named Plaintiff's or Participating Class Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant. Further, any Class Representative Enhancement Payments shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.
- 3. No Solicitation of Individual Settlements.** Defendant and its Counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Defendant and its Counsel will not attempt to procure any individual settlements from the Class Members related to the claims alleged in this

Case. Defendant may execute severance and release agreements with employees as may be appropriate in Defendant's best business judgment. Defendant will inform any such employees of this Case prior to executing such an agreement. Furthermore, nothing in this Settlement Agreement shall limit Defendant's current contractual obligations to its employees or its rights to create, implement or modify a severance program. Should this clause be violated, Plaintiffs reserve the right to terminate the Settlement Agreement. Plaintiffs and their counsel agree that until and unless the Court does not grant Final Approval of the Settlement and/or the Settlement Agreement becomes null and void, Plaintiffs and their counsel shall not attempt to procure from Class Members any requests for exclusion from the Settlement. Should this clause be violated, Defendant reserves the right to terminate the Settlement Agreement.

- 4. Publicity.** Class Counsel and Plaintiffs agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiffs agree to decline to respond to any media inquiries concerning the Settlement. Plaintiffs and Class Counsel represent and agree that they have not and will not issue any press release, publication, or otherwise disclose this Agreement or the this Settlement to the press, media, websites, or any service which reports verdicts and settlements. Plaintiffs and Class Counsel further agree not to, at any time or in any manner, talk about, write about, disclose, or otherwise publicize or cause to be publicized, the confidential, proprietary, or trade secret information of the Released Parties.
- 5. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 6. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the

implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- 7. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 8. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class Action in abeyance, including outstanding written discovery, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- 9. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 10. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 11. No Prior Assignment.** Plaintiffs hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 12. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 13. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived

at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

- 14. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member, such Class Member assumes all responsibility for the payment of such taxes.
- 15. Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- 16. Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- 17. Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 18. Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: June 28, 2021

LANZELL SMITH



Dated: June 28, 2021

RANDE MCCORMICK



Dated: _____, 2021

AMERICAN CAMPUS COMMUNITIES SERVICES, INC.

[INSERT NAME]

[INSERT POSITION]

American Campus Communities Services, Inc.

Dated: June 29, 2021

JUSTICE LAW CORPORATION



Douglas Han, Esq.

Attorneys for Plaintiffs Lanzell Smith, Rande McCormick, and on behalf of themselves and all others similarly situated

Dated: _____, 2021

Peter Z. Stockburger, Esq.

Leanna M. Anderson, Esq.

Attorneys for Defendant American Campus Communities Services, Inc.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: _____, 2021

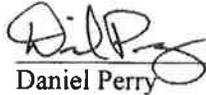
LANZELL SMITH

Dated: _____, 2021

RANDE MCCORMICK

Dated: July 7, 2021

AMERICAN CAMPUS COMMUNITIES SERVICES, INC.



Daniel Perry
Vice President

American Campus Communities Services, Inc.

Dated: _____, 2021

JUSTICE LAW CORPORATION

Douglas Han, Esq.

Attorneys for Plaintiffs Lanzell Smith, Rande McCormick, and on behalf of themselves and all others similarly situated

Dated: July 7, 2021



Peter Z. Stockburger, Esq.
Leanna M. Anderson, Esq.

Attorneys for Defendant American Campus Communities Services, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.*

TO: All current and former non-exempt employees of American Campus Communities Services, Inc. in California from June 18, 2016 through [INSERT DATE].

The California Superior Court, County of Sacramento has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned action (“Class Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All current and former non-exempt employees of American Campus Communities Services, Inc. in California during the Class Period of June 18, 2016 through [INSERT DATE].

The purpose of this Notice is to provide a brief description of the claims alleged in the Class Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About?	Page 2
3. Am I a Class Member?	Page 2
4. How Does This Class Action Settlement Work?.....	Page 3
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12. How Will the Attorneys for the Class and the Class Representative Be Paid?	Page 7

1. Why Have I Received This Notice?

The personnel records of American Campus Communities Services, Inc. (“Defendant” or “American Campus Communities”) indicate that you may be a Class Member. The Settlement will resolve all Class Members’ Released Claims, as defined in Section No. 9 below, during the time period from June 18, 2016 through October 27, 2020 (“Class Period.”)

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Sacramento. The Court conditionally certified the Class for settlement purposes only and directed that potential Class Members receive this Notice.

The Court has determined only that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing.

The Court will hold a Final Approval Hearing concerning the proposed settlement on [the date of final approval hearing], 2021 at [time a.m./p.m.], before Shama Mesiwala, located at 813 6th Street, 2nd Floor, Sacramento, California 95814, Department 53.

2. What Is This Case About?

The action entitled *Lanzell Smith et al. v. American Campus Communities Services, Inc.* was commenced by Plaintiffs Lanzell Smith and Rande McCormick in the Sacramento County Superior Court (Case Number 34-2020-00280934) as a class action.

Plaintiffs Lanzell Smith and Rande McCormick are referred to in this Notice as “Plaintiffs.” Plaintiffs’ action against Defendant sought damages, restitution, penalties, interests, costs and attorney’s fees and other relief based on the following alleged causes of action: 1) failure to pay overtime; 2) failure to provide meal period premiums; 3) failure to provide rest breaks 4) failure to pay minimum wages; 5) final wages not timely paid; 6) failure to comply with itemized employee wage statement provisions; 7) failure to reimburse business expenses; 8) violations of the Labor Code Private Attorneys General Act of 2004; and 9) violation of the Unfair Competition Law.

The Court has not made any determination as to whether the claims advanced by Plaintiffs have any merit.

In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendant; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

Defendant expressly denies that it did anything wrong or that it violated the law and further denies any liability whatsoever to Plaintiffs or to the Class.

3. Am I A Class Member?

You are a Class Member if you are currently or were formerly employed by American Campus Communities Services, Inc. in California at any time from June 18, 2016, through [INSERT DATE].

4. How Does This Class Action Settlement Work?

In this action, Plaintiffs sued on behalf of themselves and all other similarly situated employees who were employed by American Campus Communities Services, Inc. as a non-exempt employee in California at any time during the Class Period. Plaintiffs and these other current and former employees in these positions comprise a “Class” and are “Class Members.” The settlement of this action resolves the Released Claims of all Class Members, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the Settlement is fair and reasonable. The Court must also review the terms of the Settlement and determine if it is fair and reasonable to the Class. The Court file has the Settlement documents, which explain the Settlement in greater detail. If you would like copies of the Settlement documents, you can contact the Settlement Administrator at [contact information], and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiffs and the Class	Attorneys for Defendant
<p>JUSTICE LAW CORPORATION Douglas Han Shunt Tatavos-Gharajeh Arsine Grigoryan Phillip Song 751 N. Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Telephone: (818) 230-7502 Facsimile: (818) 230-7259</p>	<p>DENTONS US LLP Peter Z. Stockburger 4655 Executive Drive, Suite 700 San Diego, California 92121 Telephone: (619) 236-1414 Facsimile: (619) 232-8311</p> <p>DENTONS US LLP Leanna M. Anderson 2000 McKinney Avenue, Suite 1900 Dallas, Texas 75201 Telephone: (214) 259-0900 Facsimile: (214) 259-0910</p>

The Court has decided that Justice Law Corporation is qualified to represent the Class Members.

If you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed Settlement and of your options. Each option has its

consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: Defendant will not retaliate against you in any way for either participating or not participating in this Settlement.

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this lawsuit and will receive an Individual Settlement Payment based on your total number of workdays you worked as a Class Member in California during the Class Period. You will release all of the Released Claims, as defined in Section 9 below, and you will give up your right to pursue the Released Claims.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this action. If the Court grants final approval of the Settlement, you will not receive an Individual Settlement Payment and you will not give up the right to sue the Released Parties, including Defendant, for any the Released Claims as defined in Section 9 below. However, if you qualify as an Eligible Aggrieved Employee you will not be able to opt-out of the PAGA payment portion of the settlement but will be paid your portion of the PAGA payment.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this Settlement.

The procedures for opting out and objecting are set forth below in the sections entitled “How Do I Opt Out or Exclude Myself From This Settlement” and “How Do I Object To The Settlement?”

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not wish to participate in the Settlement, you may be excluded from the Settlement (*i.e.*, “opt out”) by sending a timely opt out form. A form (“ELECTION NOT TO PARTICIPATE IN (‘OPT OUT’ FROM) CLASS ACTION SETTLEMENT”) has been provided to you along with this Notice, which can be used for this purpose; alternatively, you can submit your own written document that includes this same information. If you opt out of the Settlement, you will not be releasing the claims set forth in Section 9. The Exclusion Form must be signed, dated, and mailed by First Class U.S. Mail, **postmarked no later than [REDACTED], 2021** to: **Lanzell Smith et al. v. American Campus Communities Services, Inc. C/O CPT GROUP, INC., [INSERT ADDRESS]**.

If you received a re-mailed Class Notice, whether by skip-trace or forwarded mail, you will have an additional ten (10) calendar days to postmark an Exclusion Form, or file and serve an objection to the Settlement. The envelope should indicate whether the Class Notice has been forwarded or re-mailed. We encourage you to keep copies of all documents, including the envelope, in the event the deadline is challenged.

The Court will exclude any Class Member who submits a complete and timely Exclusion Form as described in the paragraph above. Exclusion Forms that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Any Class Member who fails to submit a valid and timely

Exclusion Form on or before the above-specified deadline shall be bound by all terms of the Settlement, release, and any Judgment entered in the action if the Settlement receives final approval from the Court.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by mailing it to the Settlement Administrator at [address] by [the Response Deadline]. The Objection must state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) identify the case number, title, and the correct department number (53) and the date and time of the Final Approval hearing, [INSERT DATE] at 1:30 p.m. (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

Class Members who file valid objections to the Settlement may appear at the Final Approval Hearing, either in person or through the objector's own counsel. Class Members' timely and valid objections to the Settlement will still be considered even if the objector does not appear at the Final Approval Hearing.

Settlement Class members who fail to object in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.

Again, to be valid and effective, any objections must be mailed to the Settlement Administrator postmarked on or before [the Response Deadline].

If the Court rejects the Notice of Objection, the Class Member will receive an Individual Settlement Payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What Are the Released Claims?*

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge American Campus Communities Services, Inc. and any of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims in the First Amended Complaint (hereinafter "Released Parties"). The Released Claims are as follows:

A. Released Claims.

The claims that Plaintiffs and the other Participating Class Members are releasing in exchange for the consideration provided for by the Settlement are claims to be released by the Class Members include any and all claims under state, or local law, whether statutory or common law arising out of the claims expressly pleaded in the First Amended Complaint and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the First Amended Complaint for: (1) failure to pay regular and overtime wages under state and federal law; (2) failing to maintain and provide accurate time records and wage statements; (3) failure to pay minimum wage; (4) failure to timely pay final wages; (5) waiting time penalties; (6) failure to provide or pay for meal breaks; (7) failure to

provide or pay for rest periods; (8) failure to pay sick pay at the regular rate of pay; (9) failure to reimburse business expenses; (10) statutory penalties under PAGA; and (11) violation of California's unfair competition law. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position).

10. How Much Can I Expect to Receive From This Settlement?

The total maximum amount that Defendant could be required to pay under this Agreement shall be up to but no more than \$2,000,000 ("Gross Settlement Amount" or "GSA").

The "Net Settlement Amount" or "NSA" means the portion of the Gross Settlement Amount available for distribution to Class Members after the deduction of (1) the Class Representative Enhancement Payment to Plaintiffs in an amount up to \$10,000 each for prosecution of the Class Action, risks undertaken for the payment of attorneys' fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator, CPT, Inc., currently estimated at \$13,000 but it is not to exceed \$15,000; (3) a PAGA payment of \$150,000; (4) payment to Class Counsel for Class Counsel fees in an amount not to exceed \$760,000 (38% of the Gross Settlement Amount) for attorneys' fees; and (5) payment to Class Counsel of Cost Award in an amount not to exceed \$25,000 for litigation costs. All of these payments are subject to court approval.

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed among all Class Members who have not opted out. The Settlement Administrator will calculate the individual settlement shares for Participating Class Members. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the Class Member's number of workweeks as a Class Member during the Class Period based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by any and all Class Members in the Class during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. A partial week worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on Defendant's records which show you worked [REDACTED] workweeks between the dates of June 18, 2016 and [INSERT DATE].

If you believe the number of eligible workweeks records are incorrect, you may provide documentation and/or an explanation to show contrary information to the Settlement Administrator at [address] on or before [the Response Deadline]. Any evidence submitted will be carefully weighed and the Plaintiffs' counsel and Defendant's Counsel will make a final determination.

Twenty percent (20%) of your Individual Settlement Payment will be treated as unpaid wages. Applicable taxes will be withheld from the wages portion of your Individual Settlement Payment only and reported on an IRS Form W-2. The remaining eighty percent (80%) of your Individual Settlement Payment will be treated as penalties, interest, and reimbursement will be paid pursuant to an IRS Form 1099.

Defendant is expected to fund the Gross Settlement Amount within twenty-one (21) calendar days after the Settlement becomes final. Your Individual Settlement Share will be distributed within approximately 14 calendar days of the funding of the entire Gross Settlement Amount.

It is strongly recommended that upon receipt of your Individual Settlement Payment check, you immediately cash it or cash it before the 120-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 120-day period after mailing, the Settlement Administrator will, within one hundred and fifty (150) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the California State Controller's Office in accordance with California Unclaimed Property Law.

11. *What is the PAGA Payment and Am I Eligible for it?*

Under the terms of the settlement, \$150,000 has been set aside as a PAGA payment. This portion is the total amount of civil penalties collected on behalf of the State of California. From this amount, \$112,500 will be sent to the State of California. Aggrieved employees will share \$37,500 based on the number of pay periods they worked.

You are an "aggrieved employee" eligible to share the PAGA payment under the settlement ("Eligible Aggrieved Employee"), if you are a current or former non-exempt employee who worked for American Campus Communities Services, Inc. within the State of California between May 28, 2019, and [INSERT DATE] ("PAGA Timeframe").

The individual share will be calculated by determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (i.e., the sum of all pay periods of employment for each eligible aggrieved employee), and dividing that number into the \$37,500 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual Eligible Aggrieved Employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share.

Based on your total number of pay periods, your individual settlement payment is approximately \$ [REDACTED]. You are responsible for paying any federal, state or local taxes owed as a result of this payment.

Because these penalties can only be sought by the State of California, you cannot exclude yourself from the PAGA portion of the settlement if the Court gives final approval.

If you are not an Eligible Aggrieved Employee, this Section does not apply to you.

12. *How Will the Attorneys for the Class and the Class Representatives Be Paid?*

The attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiffs and the Class shall be paid an amount not to exceed 38% of the Gross Settlement Amount (or \$760,000) for attorney fees and up to \$25,000 for litigation costs.

Defendant is responsible for all of its own attorneys' fees and costs.

As set forth in Section 10 above, the Plaintiffs will also be paid a Class Representative Enhancement Payment, subject to Court approval.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. Please refer to the “American Campus Communities Services, Inc. class action settlement.”

This Notice does not contain all of the terms of the proposed Settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Records Management Office at located at 813 6th Street, Sacramento, California 95814, Room 212 between 8:30 a.m. and 4:00 p.m.

Access to all documents related to the Settlement will also be made available at [INSERT URL Address]

You may also contact the Settlement Administrator, whose contact information is above, and they will provide you with an electronic copy of the Settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT’S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

EXHIBIT B

ELECTION NOT TO PARTICIPATE IN (“OPT OUT” FROM) CLASS ACTION SETTLEMENT

Superior Court of the State of California, County of Sacramento
Lanzell Smith et al. v. American Campus Communities Services, Inc.
Case No. 34-2020-00280934

DO NOT SIGN OR SEND THIS DOCUMENT UNLESS YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT. IF YOU EXCLUDE YOURSELF, YOU WILL NOT RECEIVE ANY PAYMENT FROM THE SETTLEMENT.

THIS DOCUMENT MUST BE POSTMARKED NO LATER THAN _____, 2021. IT MUST BE SENT VIA REGULAR U.S. MAIL.

PLEASE MAIL THIS EXCLUSION FORM VIA REGULAR U.S. MAIL TO:

**AMERICAN CAMPUS COMMUNITIES SERVICES, INC. SETTLEMENT ADMINISTRATOR,
C/O CPT GROUP, INC. [INSERT ADMINISTRATOR ADDRESS]**

IT IS MY DECISION NOT TO PARTICIPATE IN THE CLASS ACTION REFERRED TO ABOVE, AND NOT TO BE INCLUDED IN THE CLASS OF PLAINTIFFS IN THAT ACTION. I UNDERSTAND THAT BY EXCLUDING MYSELF, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT, EXCEPT MY PORTION OF THE CIVIL PENALTIES THAT IS ALLOCATED TO THE CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT OF 2004 LABOR CODE §§ 2698, *et seq.* (“PAGA”) SETTLEMENT.

I ALSO UNDERSTAND THAT IF I ELECT TO OPT OUT OF THIS CLASS ACTION SETTLEMENT, ANY CLAIMS I HAVE WILL NOT BE RELEASED; EXCEPT THAT, EVEN IF I ELECT TO OPT OUT, I CANNOT, AND COVENANT NOT TO PURSUE ANY ACTION UNDER PAGA AGAINST THE RELEASED PARTIES FOR ANY CLAIMS THAT AROSE BETWEEN MAY 28, 2019 AND [INSERT DATE].

I confirm that I have received and reviewed the Notice of Class Action Settlement in this action. I have decided to be excluded from the Class, and I have decided **not** to participate in the proposed settlement.

Dated: _____

(Signature)

(Last Four Digits of Social Security Number)

(Type or print name and former name(s))

(Telephone Number)

(Address)

(Address continued)