

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

ERIKA LAFLORA, individually on behalf of  
herself, and on behalf of all others individually  
situated,

Plaintiff,

vs.

TERRIO PHYSICAL THERAPY & FITNESS,  
INC.

Defendant.

Case No. BCV-19-1029525

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

Complaint Filed: October 15, 2019

**TO ALL CLASS MEMBERS DEFINED AS:**

All individuals who are current and former hourly-paid or non-exempt employees who worked for Defendant Terrio Physical Therapy & Fitness, Inc. within the State of California at any time from October 15, 2015 through November 10, 2020.

**YOU ARE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT. PLEASE READ  
THIS NOTICE CAREFULLY.**

The settlement involves claims against Terrio Physical Therapy & Fitness, Inc. (“Defendant”) alleging claims for: (a) failure to pay all minimum and overtime wages for all hours worked including, but not limited to, those resulting from automated rounding and off-the-clock work; (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon; (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon; (d) failure to reimburse all necessary business expenses incurred; (e) failure to maintain and furnish accurate itemized wage statements; (f) failure to timely pay wages during employment and all final wages owed upon separation; (g) violation of California’s Private Attorneys’ General Act of 2004 (“PAGA”); and (h) engaging in unfair and unlawful business practices.

**NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT:** If you are a Class Member (as defined above) and received this Notice, you are automatically included in the Settlement and do not need to take any further action to receive a payment. If you accept your settlement amount, you will release the claims described in Section V below.

## I. INTRODUCTION

This “Notice of Proposed Class Action Settlement And Hearing Date For Court Approval” (“Notice”) is to inform you that Defendant has agreed to settle a class action lawsuit on behalf of all Class Members which claimed, among other things, that Defendant violated various wage-and-hour laws by failing to provide all minimum and overtime wages due, off-duty rest and meal breaks and/or pay missed rest and meal break premiums, failing to reimburse all necessary business expenses incurred, failing to provide accurate itemized wage statements, and failing to pay wages owed in a timely manner and upon separation, and thereby engaging in unfair business practices under California Bus. & Prof. Code Section 17200 and accruing penalties under California Labor Code provisions forming the basis for a PAGA claim for derivative civil penalties.

The Court has granted preliminary approval of the Settlement and the Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

## II. DESCRIPTION OF THE LAWSUIT

**Plaintiff’s Claims.** On October 15, 2020, Plaintiff Erika LaFlora initiated this Action in the Superior Court of the State of California, County of Kern on behalf of herself and a class of similarly-situated individuals against Defendant Terrio Physical Therapy & Fitness, Inc. On behalf of the putative class, Plaintiff alleged causes of action for: (a) failure to pay all minimum and overtime wages for all hours worked including, but not limited to, those resulting from automated rounding and off-the-clock work (Labor Code §§ 510, 1194, 1194.3, 1197, 1197.1, and 1198); (b) failure to provide timely and compliant duty-free meal periods and pay premiums owed thereon (Labor Code §§ 226.7 and 512); (c) failure to provide timely and compliant duty-free rest breaks and pay premiums owed thereon (Labor Code § 226.7); (d) failure to reimburse all necessary business expenses incurred (Labor Code §§ 2800, 2802); (e) failure to maintain and furnish accurate itemized wage statements (Labor Code §§ 226, 1174(d)); (f) failure to timely pay wages during employment and all final wages owed upon separation (Labor Code §§ 201-203, 204); (g) violation of California’s Private Attorneys’ General Act of 2004 (Labor Code § 2699); and (h) engaging in unfair and unlawful business practices (Business & Professions Code § 17200 *et seq.*). (collectively, “Claims”).

**Defendant has denied liability, has denied the allegations in the Complaint, and has raised various defenses to these Claims.** Defendant contends that it complied in good faith with California wage-and-hour laws and has dealt legally and fairly with Plaintiff and Class Members. Defendant further denies that, for any purpose other than settling this Action, these Claims are appropriate for class or representative treatment. Defendant wishes to settle this case, however, to avoid costly, disruptive, and time-consuming litigation and does not admit to any wrongdoing or liability.

The Court has not ruled on the merits of Plaintiff’s Claims. By approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Defendant

and Plaintiff have concluded that it is in their respective best interests and the interests of the Class Members to settle the Action on the terms summarized in this Notice. After Defendant provided extensive discovery and information to counsel for the Class Members, the Settlement was reached after arms-length non-collusive negotiations between the parties, including mediation with a highly respected mediator in California. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Settlement was a fair, reasonable and adequate way to resolve the disputed Claims.

The Plaintiff and Class Counsel support this Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the risk of denial of class certification, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

Under this Settlement, the following Class will be certified under California law for Settlement purposes only:

**Class or Class Members:** All individuals who are current and former hourly-paid or non-exempt employees who worked for Defendant Terrio Physical Therapy & Fitness, Inc. within the State of California at any time during the period from October 15, 2015 through November 10, 2020 (the “Class Period”).

Plaintiff Erika LaFlora, and her counsel, Jennifer Connor, Esq. and Anthony Orshansky, Esq. of CounselOne, P.C. and Edwin Aiwazian, Esq. of Lawyers for Justice, P.C. (“Class Counsel”), believe that the settlement described below is fair, adequate, reasonable and in the best interests of Plaintiff and the Class.

On February 3, 2021, the Court preliminarily approved the Settlement and conditionally certified the above Class for settlement purposes only. This Notice is being sent to you because Defendant’s records indicate that you are a Class Member.

**IF YOU STILL WORK FOR DEFENDANT, PARTICIPATION IN THIS SETTLEMENT WILL NOT AFFECT, NOR DISRUPT YOUR WORK IN ANY MANNER.**

**California law strictly prohibits retaliation.** Further, Defendant is prohibited by law from taking any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement.

<b>III. TERMS OF THE SETTLEMENT</b>
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Defendant has agreed to pay \$900,000.00 (the “Gross Settlement Amount”) to resolve claims in the operative Complaint, including all Class Members’ claims under Labor Code and Business & Professions Code for: (1) unpaid minimum wages; (2) unpaid overtime; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to pay wages timely during employment; (6) failure to pay final wages timely; (7) failure to give accurate itemized wage statements; (8) failure to maintain payroll records; (9) unreimbursed business expenses; (10) violation of unfair competition law; and (11) violation of the Private Attorneys General Act of 2004.

The parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved CPT Group, Inc., to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, up to \$15,000.00 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Class Counsel Attorneys’ Fees and Expenses. Class Counsel – which includes attorneys from two separate law firms - have been prosecuting the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. To date, the parties have aggressively litigated many aspects of the case including settlement efforts and a full day mediation session. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or litigation expenses. Class Counsel will collectively ask for fees of thirty-five percent (35%) - *i.e.*, \$315,000.00 - of the Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action. Class Counsel also will ask for reimbursement of up to \$25,000.00 for the costs Class Counsel incurred in connection with the Action.

Class Representative Service Award. Plaintiff Erika LaFlora will seek an award of \$7,500.00, in addition to her Individual Settlement Payment, for her efforts and risks in assistance with the prosecution of the Action and in exchange for her execution of a general release.

PAGA Penalties. The parties have agreed on a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$60,000.00. The PAGA Penalties is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (*i.e.*, \$45,000.00) to the Labor & Workforce Development Agency (“LWDA”) and twenty-five percent (25%) (*i.e.*, \$15,000.00) to the Class Members. Class Counsel shall give timely notice of the Settlement to the LWDA under Labor Code section 2699(1)(2).

Payroll Taxes. Taxes and other required employer withholdings, including but not limited to Defendant’s FICA and FUTA contributions, shall be paid from the Gross Settlement Amount.

Net Settlement Amount. After deducting the amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount for distribution to the Class Members.

You can view the Settlement Agreement and other Court documents related to this case by visiting [www.cptgroupcaseinfo.com/terriophysicaltherapy](http://www.cptgroupcaseinfo.com/terriophysicaltherapy).

#### **IV. YOUR INDIVIDUAL SHARE OF THE SETTLEMENT AMOUNT**

The Individual Settlement Payment for each Settlement Class Member (a Class Member that does not opt-out of the Settlement) will be paid from the Net Settlement Amount and will be calculated as follows: The Settlement Administrator shall divide the compensable workweeks for each Settlement Class Member by the total compensable workweeks for all Settlement Class Members,

resulting in the Payment Ratio for each Settlement Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.

Each Individual Settlement Payment will be reduced by any legally mandated tax withholdings for each Settlement Class Member. All Individual Settlement Payments paid to Settlement Class Members are to be reported as income on IRS Form 1099 and IRS Form W-2s where required by law. Of the amounts paid to individual Settlement Class Members, eighty percent (80%) shall be designated as penalties and interest for which an IRS Form 1099 shall issue and twenty percent (20%) to wages for which an IRS Form W-2 shall issue. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments received. The Settlement Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

The workweeks you worked as a qualifying Class Member in California for Defendant during the Class Period will be calculated based on Defendant's records. If you feel that you were not credited with the correct number of workweeks worked during the Class Period – which is from October 15, 2015 through November 10, 2020 - you may submit evidence to the Settlement Administrator on or before **April 9, 2021** with documentation to establish the number of workweeks you claim to have actually worked during the Class Period. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The parties and Settlement Administrator will promptly evaluate the evidence submitted and discuss in good faith how many workweeks should be credited. The Settlement Administrator will make the final decision as to how many weeks are credited, and report the outcome to you. If you are unsatisfied with the decision, you may submit an Objection, as discussed below.

The Individual Settlement Amount payments will be made by the Settlement Administrator pursuant to the disbursement plan, subject to Court-approval, as follows: Defendant shall pay the Gross Settlement Amount of \$900,000.00 to the Settlement Administrator, which shall be funded and distributed **in two (2) separate and equal installment** payments of \$450,000.00 each, according to the following schedule:

**A. First Installment.**

Within thirty (30) calendar days after the Effective Date, Defendant shall pay \$450,000.00 to the Settlement Administrator. The Effective Date shall be the date upon which the Court grants final approval of the Settlement if (a) no Settlement Class Members file objections to the Settlement, or (b) any Settlement Class Member files an objection but it is subsequently withdrawn. However, if an objection is filed and an appeal or other appellate proceeding is initiated, the Effective Date shall be sixty (60) days after the Court grants final approval of the Settlement or date of termination of such appellate proceedings.

No later than ten (10) calendar days after receipt of the above First Installment payment, the Settlement Administrator shall, subject to approval and award by the Court, make the following

payments therefrom: i) 100% of the LWDA's share of the PAGA Penalties; ii) 100% of the Class Representative Service Award; iii) 50% of the Settlement Administrator's Costs; iv) 50% of the Class Counsel Attorneys' Fees and Costs; and v) 50% of the Settlement Class Members' Individual Settlement Payments and associated payroll taxes.

**B. Second Installment.**

Within six (6) months after the First Installment, Defendant shall pay the remaining \$450,000.00 to the Settlement Administrator. No later than ten (10) calendar days after receipt of the Second Installment payment, the Settlement Administrator shall, subject to approval and award by the Court, make the following payments therefrom: i) 50% of the Settlement Administrator's Costs; ii) 50% of the Class Counsel Attorneys' Fees and Costs; and iii) 50% of the Settlement Class Members' Individual Settlement Payments and associated payroll taxes.

If the Settlement Administrator is not able to disburse payments within the time period set forth above, it shall so inform Class Counsel and defense counsel and provide an approximate date by which the Individual Settlement Payments will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to Settlement Class Members until all Individual Settlement Payments have been considered, calculated, and accounted for, and all of the remaining monetary obligations have been calculated and accounted for.

You can view the final approval order and final judgment and payment schedule at [www.cptgroupcaseinfo.com/terriophysicaltherapy](http://www.cptgroupcaseinfo.com/terriophysicaltherapy).

**V. THE RELEASE OF CLAIMS**

If the Court approves the Settlement, the Court will enter judgment and the Settlement Agreement will bind all members of the Settlement Class who have not opted out of the Settlement, and will bar all Settlement Class Members from bringing certain claims against Defendant as described below.

The Settlement includes a release by Settlement Class Members (defined as those Class Members who do not submit a timely Opt-Out/request to be excluded) of Defendant Terrio Physical Therapy & Fitness, Inc., and Defendant's former and present parents, subsidiaries, affiliates, and other officers, directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal representatives (the "Released Parties"), and each of them, of and from any and all Settlement Class Members' Released Claims as set forth below:

**Settlement Class Members' Released Claims:** means all claims, rights, demands, liabilities, and causes of action of every nature and description whether pled or could have been pled based on the factual allegations in the Action against Defendant, during the Class Period, for: (1) unpaid minimum wages; (2) unpaid overtime; (3) failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to pay wages timely during employment; (6) failure to pay final wages timely; (7) failure to give accurate itemized wage statements; (8) failure to maintain payroll records; (9) unreimbursed business expenses; (10) violation of unfair

competition law; and (11) violation of the Private Attorneys General Act of 2004 (collectively, “Settlement Class Members’ Released Claims”).

The Class Representative further agrees to a general release of all claims against Defendant during the Class Period, and agrees to waive her rights under Civil Code Section 1542 (“Plaintiff’s Released Claims”).

Settlement Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties in the Action are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Settlement Class Members will be deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Individual Settlement Payments. That section provides in pertinent part as follows:

**“An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made.”**

## **VI. WHAT ARE YOUR OPTIONS?**

### **A. Do Nothing and Receive Your Portion of the Settlement.**

You are automatically included as a Settlement Class Member and will receive a settlement payment and do not have to take any further action to receive your settlement payment. It is the responsibility of all Settlement Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or a settlement payment. The estimated amount of your settlement payment if you do nothing is included on the attached Share Form.

### **B. Opt-Out and Be Excluded from the Class and the Settlement.**

If you **do not** wish to take part in the Settlement, you may exclude yourself (*i.e.*, Opt-Out) by sending to the Settlement Administrator an Opt-Out/request for exclusion from the Settlement letter postmarked no later than **April 9, 2021**, with your name, address, telephone number, and signature. The Opt-Out request should state:

**“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LAFLORA v. TERRIO PHYSICAL THERAPY & FITNESS, INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.”**

Send the Opt-Out request directly to the Settlement Administrator at the following address **by no later than April 9, 2021**:

LaFlora v. Terrio Physical Therapy-Fitness, Inc. Settlement Administrator  
c/o CPT Group Inc.  
50 Corporate Park  
Irvine, CA 92606

Any person who submits a timely Opt-Out/request for exclusion from the Settlement shall, upon receipt, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. If you want confirmation of receipt of your Opt-Out request, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.

**C. Object to the Settlement.**

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must file with the Settlement Administrator a written objection stating: your name, address, and telephone number; dates of work as an hourly or non-exempt employee in California with Defendant; the case name and number; each specific reason in support of your objection; and any legal support for each objection. Objections must be in writing and must be mailed to the Settlement Administrator, LaFlora v. Terrio Physical Therapy-Fitness, Inc. Settlement Administrator c/o CPT Group Inc. 50 Corporate Park Irvine, CA 92606, **by no later than April 9, 2021** for your objection to be considered. **OBJECTIONS THAT DO NOT INCLUDE ALL REQUIRED INFORMATION, OR THAT ARE NOT SUBMITTED TIMELY, MAY NOT BE CONSIDERED BY THE COURT.**

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. Any Settlement Class Member who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

**D. Your Right to Appear at the Final Approval and Fairness Hearing Through an Attorney or In Person.**

If you choose to object to the Settlement, you may also appear at the Final Approval and Fairness Hearing scheduled for **May 14, 2021**, at **8:30 a.m.** in Department 17 of the Kern County Superior Court, Metropolitan Division, located at 1415 Truxtun Avenue, Bakersfield, California 93301. You have the right to appear either in person or through your own attorney at this hearing. Objections not previously filed in writing in a timely manner as described above will not be considered by the Court. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **April 9, 2021**. All objections or other correspondence must state the name and number of the case, which is *Erika LaFlora v. Terrio Physical Therapy-Fitness, Inc.* Case No. BCV-19-1029525.



## **VII. UPDATE FOR YOUR CHANGE OF ADDRESS?**

If you move after receiving this Notice or if it was mis-addressed, please complete the Change of Address portion of the Share Form and mail it to the Settlement Administrator, LaFlora v. Terrio Physical Therapy-Fitness, Inc. Settlement Administrator c/o CPT Group Inc. 50 Corporate Park Irvine, CA 92606, as soon as possible. **THIS IS IMPORTANT SO THAT FUTURE NOTICES AND/OR THE SETTLEMENT PAYMENT REACH YOU.**

## **VIII. IF THE STIPULATION OF SETTLEMENT AND RELEASE OF CLASS ACTION IS NOT APPROVED**

If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the conditional Settlement will be voided, no money will be paid, and the case will return to litigation. If that happens, there is no assurance: (1) that the Class will be certified; (2) that any decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as favorable to the Class Members as this Settlement; or (4) that any favorable trial decision would be upheld if an appeal was filed.

## **IX. QUESTIONS OR COMMENTS**

**PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about the Settlement, you may contact the Settlement Administrator at: LaFlora v. Terrio Physical Therapy-Fitness, Inc. Settlement Administrator c/o CPT Group Inc. 50 Corporate Park Irvine, CA 92606 or by e-mail at [classmemberquestions@cptgroup.com](mailto:classmemberquestions@cptgroup.com). You may also contact Class Counsel at the address or phone number listed below.

### THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

#### COUNSELONE, P.C.

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