

FILED
KERN COUNTY SUPERIOR COURT
5/14/2021

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DEPUTY

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

15 ERIKA LAFLORA, individually, and on
16 behalf of other members of the general
17 public similarly situated and on behalf of
18 other aggrieved employees pursuant to the
California Private Attorneys General Act,

19 Plaintiff,

20 v.

21 TERRIO PHYSICAL THERAPY-FITNESS,
22 INC. a California corporation; and DOES 1
through 10, inclusive,

23 Defendant.

Case No. BCV-19-102925

[Assigned for all purposes to Hon. Thomas
Clark; Dept. 17]

CLASS ACTION

**~~AMENDED~~ [PROPOSED] FINAL ORDER
AND JUDGMENT GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES AND
COSTS, AND CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Final Approval Hearing:
Hearing Date: May 14, 2021
Time: 8:30 a.m.
Dept. 17

Complaint Filed: October 15, 2019

1 WHEREAS, this matter came on for hearing on May 14, 2021, at 8:30 a.m. before the
2 Honorable Thomas Clark, in Department 17 of the Kern County Superior Court, Metropolitan
3 Division, located at 1415 Truxtun Avenue, Bakersfield, California 93301, upon the application
4 of the Plaintiff for approval of the settlement set forth in the Joint Stipulation Of Class Action
5 Settlement (“Settlement” or “Settlement Agreement”), and due and adequate notice was given
6 to the members of the Class, the Court having considered all papers filed and proceedings in
7 this case and good cause appearing therefore, and

8 WHEREAS, all defined terms contained herein have the same meanings as set forth in
9 the Stipulation,

10 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

11 1. Capitalized terms not otherwise defined herein shall have the same meaning as
12 set forth in the Settlement.

13 2. The Court has jurisdiction over this matter and venue is proper.

14 3. The Court finds that this Action is properly maintained as a class action, for
15 settlement purposes only, pursuant to California Code of Civil Procedure Section 382 and
16 California Rule of Court 3.769.

17 4. For settlement purposes only, the “Class” and “Class Member(s)” for purposes
18 of this Order shall mean:

19 All current and former hourly-paid or non-exempt employees who worked for
20 Defendant Terrio Physical Therapy & Fitness, Inc. within the State of California
21 at any time from October 15, 2015 through November 10, 2020 (collectively,
22 “Class Members”).

22 After distribution of the Court-approved Notice of Class Action Settlement and a forty-five (45)
23 day opt-out period, the Settlement Administrator reports that response from the 443 Class
24 Members resulted in zero objections and only one opt-out/request for exclusion. There was also
25 reported one undeliverable class notice, and per the Court, said individual is excluded. Thus,
26 except for that individual who submitted an opt-out/request for exclusion, along with the
27 individual with the undeliverable class notice, a Settlement Class consisting of 441 Settlement
28 Class Members shall be bound by this Final Approval Order or any release provided herein.

- 1 5. CounselOne, P.C. and Lawyers *for* Justice, P.C. are appointed Class Counsel.
- 2 6. Named Plaintiff Erika LaFlora is appointed Class Representative.
- 3 7. The Court approves CPT Group, Inc. as the Settlement Administrator.
- 4 8. The Court finds that the 9-page *Notice of Proposed Class Action Settlement*, along
- 5 with a 3-page *Share Form* (collectively, “Notice Packets”) – copies of which are attached as
- 6 **Exhibit “A”** and were attested to and authenticated by the Settlement Administrator - as mailed
- 7 to Settlement Class Members by the Settlement Administrator was the best notice practicable
- 8 under the circumstances. Except for one individual whose Notice Packet was undeliverable and
- 9 at the Court’s initiative is deemed excluded, the Class Notice provided due process and adequate
- 10 notice of the proceedings and of the matters set forth therein, including the proposed terms of
- 11 settlement set forth in the Settlement Agreement, to all persons entitled to such notice, and said
- 12 Class Notice fully satisfied the requirements of the law and the requirements of due process. Out
- 13 of the 443 putative Class Members, one (1) Class Member submitted an opt-out (thus, 99.77%
- 14 of the Class Members are participating in the Settlement), and no Settlement Class Members
- 15 objected to the Settlement.
- 16 9. The Court finds that the Settlement Agreement is fair, reasonable, and adequate
- 17 to the Settlement Class Members, is in the best interest of the Settlement Class Members, has
- 18 been entered into in good faith and should be and hereby is fully and finally approved. The
- 19 Settlement represents a fair resolution of all claims asserted on behalf of Plaintiff and the
- 20 Settlement Class Members, and fully and finally resolves all such claims.
- 21 10. The Court hereby approves the class settlement set forth in the Settlement
- 22 Agreement and finds that the settlement is, in all respects, fair, adequate and reasonable and
- 23 directs the Parties and Settlement Administrator to effectuate the Settlement according to its
- 24 terms. The Court finds that the settlement has been reached as result of intensive, serious and
- 25 non-collusive arm’s length negotiations. The Court finds that the Parties have conducted
- 26 extensive investigation and research and counsel for the Parties are able to reasonably evaluate
- 27 their respective positions. The Court also finds that settlement at this time will avoid additional
- 28 substantial costs, as well as avoid the delay and risks that would be presented by the further

1 prosecution of this Action. The Court has noted the significant benefits to the Settlement Class
2 Members under the Settlement.

3 11. As of the Effective Date, Plaintiff and each Settlement Class Member, on behalf
4 of himself or herself and on behalf of his or her respective heirs, assigns, beneficiaries and
5 successors, shall be deemed to have, and by operation of the Final Approval Order shall have,
6 fully and irrevocably released and forever discharged the Released Parties from all Settlement
7 Class Members' Released Claims, as more fully set forth in the Settlement Agreement.

8 12. The Court orders that, upon the Effective Date, the Settlement shall be the
9 exclusive remedy for any and all Plaintiff's Released Claims of Plaintiff, and for any and all
10 Settlement Class Members' Released Claims of each and every Settlement Class Member.

11 13. The Settlement Amount to be paid by Defendant Terrio Physical Therapy &
12 Fitness, Inc. is a non-reversionary \$900,000.00 as part of the Gross Settlement Amount. The
13 Gross Settlement Amount ("GSA") will be used for the following: (1) to satisfy the Individual
14 Settlement Payments to Settlement Class Members and pay payroll taxes thereon; (2) to pay the
15 Court-approved Class Representative Enhancement Payment; (3) to pay the PAGA Penalties
16 including the Labor and Workforce Development Agency ("LWDA") payment and to Class
17 Members; (4) to pay the Settlement Administration Costs; (5) to pay the Court-approved Class
18 Counsel's attorneys' fees; and (6) to pay the Court-approved Class Counsel's actual litigation
19 costs.

20 14. The requested award of attorneys' fees to Class Counsel in the amount of
21 \$315,000.00 is approved as fair, adequate, and reasonable and is to be divided between the two
22 law firms, Lawyers for Justice, P.C. and CounselOne, P.C. in accord with their respective 57.5%
23 and 42.5% fee split terms per their written fee agreement.

24 15. The requested award of litigation costs of \$17,675.18 to Class Counsel for
25 expenses incurred is approved as fair, adequate, and reasonable.

26 16. The Class Representative enhancement payment in the amount of \$7,500.00 to
27 the Class Representative is approved as being fair and reasonable compensation for the Class
28 Representative's efforts in initiating and prosecuting this action, the work involved, and the risks

1 assumed.

2 17. The Court approves the costs of the Settlement Administrator, CPT Group, Inc.,
3 in the amount of \$13,500.00 for the notification and claims administration services it performed
4 in connection with this Action.

5 18. The payment of the California Labor and Workforce Development Agencies
6 (“LWDA”) for civil penalties in the amount of \$60,000.00, \$45,000.00 of which will be paid to
7 the LWDA pursuant to statute, is approved.

8 19. From the Net Settlement Amount, the Settlement Administrator shall pay all
9 individual settlement amount payments to Settlement Class Members, including the employment
10 taxes for wage-related portions thereto. The calculation, timing, and payment of individual
11 settlement checks to Settlement Class Members will be made by the Defendant and Settlement
12 Administrator in the two separate and equal installments of \$450,000 each, in specific accord
13 with paragraph 62, and among other paragraphs, in the Settlement Agreement. (Settlement ¶ 62.)

14 20. The Settlement provides that any uncashed checks remaining 180 days after
15 distribution will be provided to a *cy pres* recipient, pursuant to Code of Civil Procedure section
16 384. Counsel for the Parties propose and the Court approves the California non-profit, CASA of
17 Kern County (Settlement ¶ 64.). CASA of Kern County is a 501(c)(3) not-for-profit with a
18 mission to train volunteers to advocate and represent the interests of abused and neglected
19 children and youth in the juvenile court process, along with schools and other community
20 environments. Finally, pursuant to amendments to section 384 that took effect January 1, 2019,
21 counsel must report to the Court on the ultimate amount of money actually dispersed. This
22 reporting will be made at a status conference to be held on September 16, 2022 at 8:30 a.m. with
23 a declaration regarding the status of the settlement administration submitted five (5) court days
24 prior to the final accounting hearing.

25 21. The Court finds the settlement on the terms set forth in the Settlement Agreement
26 was made in good faith and constitutes a fair, reasonable, and adequate compromise of the
27 released claims against Defendant. Without affecting the finality of this Judgment in any way,
28 this Court hereby retains continuing jurisdiction over the interpretation, implementation, and

1 enforcement of the settlement and all orders and judgments entered in connection therewith.

2 22. Without further order of the Court, the Parties may agree to reasonably necessary
3 extensions of time to carry out any of the provisions of the settlement.

4 Based on the foregoing Order the Court enters the following Judgment:

5 **Judgment.**

6 23. Judgment is hereby entered pursuant to California Rules of Court, Rule 3.769(h).
7 Without affecting the finality of this Order and further pursuant to Rule 3.769(h), the Court
8 retains exclusive and continuing jurisdiction over the litigation for purposes of supervising,
9 implementing, interpreting, and enforcing this order and the Settlement Agreement, and in order
10 to conduct the final compliance hearing on certification of distribution procedure.

11 24. The Settlement Administrator shall post this Judgment on the Settlement website
12 for a period of at least 30 days. This posting shall provide the requisite notice of the Judgment to
13 the Settlement Class and satisfy the requirements of California Rules of Court Rule 3.771(b).

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15 **IT IS SO ORDERED.**

Signed: 5/14/2021 02:59 PM



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18 Dated: 05/14/2021

19 Hon. Thomas Clark
20 Judge of the Superior Court
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Exhibit A

**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.

III. TERMS OF THE SETTLEMENT

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.

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.

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. You may also contact Class Counsel at the address or phone number listed below.

THE ATTORNEYS REPRESENTING THE CLASS MEMBERS ARE:

COUNSELONE, P.C.

Anthony J. Orshansky, Esq.
anthony@counselonegroup.com
 Jennifer L. Connor, Esq.
jennifer@counselonegroup.com
 9301 Wilshire Boulevard, Suite 650
 Beverly Hills, California 90210
 Telephone: (310) 277-9945
 Facsimile: (424) 277-3727

LAWYERS *for* JUSTICE, P.C.

Edwin Aiwasian, Esq.
edwin@lfjpc.com
 410 West Arden Avenue, Suite 203
 Glendale, California 91203
 Telephone: (818) 265-1020
 Facsimile: (818) 265-1021

Share Form*LaFlora v. Terrio Physical Therapy-Fitness, Inc.*

Case No. BCV-19-1029525 Superior Court of the State of California, County of Kern

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. (“Class” or “Class Members”).

The Class Period is October 15, 2015 through November 10, 2020.

YOUR ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT:

Your total Individual Settlement Payment is currently estimated at \$<<estAmount>>. You have been identified as a Class Member. Your estimated award is based on your pro-rata percentage of the Net Settlement Amount based on your membership in the Class relative to all respective Class Members. Your estimated pro-rata share of the Net Settlement Amount (as defined in the accompanying Notice) is: <<PaymentRatio>>%. Your estimated pro-rata share may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement. The Net Settlement Amount to be distributed to all Settlement Class Members who do not opt-out of the Settlement is currently estimated to be \$492,500.00.

YOUR NUMBER OF COMPENSABLE WORKWEEKS:

As a Class Member, your pro-rata percentage is further dependent on your individual Compensable Workweeks worked as a percentage of the total number of Compensable Workweeks worked by all Class Members during the Class Period. “Compensable Workweeks” means the seven-day work week during the Class Period – between October 15, 2015 through November 10, 2020 – during which you were actively employed as an hourly-paid or non-exempt employee for Defendant in California according to its payroll records. Terrio Physical Therapy & Fitness, Inc.’s payroll records show that during the Class Period (between October 15, 2015 through November 10, 2020), you had a total number of <<TotalWorkweeks>> Compensable Workweeks.

YOU DO NOT NEED TO DO ANYTHING IN ORDER TO RECEIVE MONEY UNDER THE SETTLEMENT.

If you believe the total number of your Compensable Workweeks worked during the Class Period (listed above) is accurate, you do not need to take any further action in order to receive your payment.

TO CHALLENGE THE NUMBER OF YOUR WEEKS WORKED AS AN HOURLY-PAID OR NON-EXEMPT EMPLOYEE WORKING FOR TERRIO PHYSICAL THERAPY & FITNESS, INC. IN CALIFORNIA DURING THE CLASS PERIOD, THE SHARE FORM AND THE CHALLENGE PORTION OF THE FORM BELOW MUST BE SIGNED AND POSTMARKED NO LATER THAN APRIL 9, 2021.

CHALLENGE FORM TO DISPUTE COMPENSABLE WORKWEEK(S)

Important:

1. You do NOT have to complete this part of the Share Form if the total number of your Compensable Workweeks worked as a Class Member in California for Terrio Physical Therapy & Fitness, Inc. during the Class Period as stated above is accurate.
2. If you do submit this form, it is strongly recommended that you keep proof of timely mailing of this form until receipt of your settlement payment.
3. If you change your mailing address, please provide your new mailing address to the Settlement Administrator. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

Check the box below ONLY if you wish to challenge the total number of your Compensable Workweeks as stated above. All fields on this Challenge Form must be complete for your challenge to be accepted:

- I wish to challenge the total number of my Compensable Workweeks. I have included a written statement detailing what I believe to be the correct number of weeks that I worked as an hourly-paid or non-exempt employee for Terrio Physical Therapy & Fitness, Inc. in California during the Class Period (between October 15, 2015 through November 10, 2020). I have also included information and/or documentary evidence that support my challenge. I understand that by submitting this challenge I authorize the Settlement Administrator to review Terrio Physical Therapy & Fitness, Inc.'s records and determine the validity of my challenge.

Signature

Name of Class Member: <<FullName>>

Class Member ID Number (from address label): <<ID>>

I believe that the correct number of weeks that I worked as an hourly-paid or non-exempt employee for Terrio Physical Therapy & Fitness, Inc. in California during the Class Period between October 15, 2015 through November 10, 2020 is: _____

The following is a statement of my reasons and documentation to support this number of Compensable Workweeks worked:

[Attach documentation and use separate page(s) as necessary]

Mail to:

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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 9301 Wilshire Boulevard, Suite 650,
5 Beverly Hills, California 90210, lanie@counselonegroup.com

6
7 On May 14, 2021, I served the document(s) described as

8 **AMENDED [PROPOSED] FINAL ORDER AND JUDGMENT GRANTING PLAINTIFF'S**
9 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS'**
10 **FEES AND COSTS, AND CLASS REPRESENTATIVE ENHANCEMENT PAYMENT**

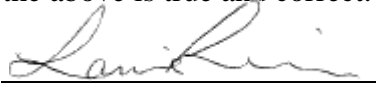
11 to the entities and/or individuals listed below.

12 Daniel K. Klingenberger, Esq. Attorneys for Defendant
13 dklingenberger@lebeauthelen.com
14 LAW OFFICES OF LEBEAU THELEN, LLP
15 5001 East Commercenter Drive, Suite 300
16 Post Office Box 12092
17 Bakersfield, California 93389-2092

18 [X] (BY ELECTRONIC SERVICE) Based on CCP 1010.6, a court order or an agreement
19 of the parties to accept service by electronic transmission, I caused the documents to
20 be sent to the persons listed above through One Legal. I did not receive, within a
21 reasonable time after the transmission, any electronic message or other indication that
22 the transmission was unsuccessful.

23 Executed on May 14, 2021, in Los Angeles, California.

24 [X] (STATE) I declare under penalty of perjury under the laws of the State of
25 California that the above is true and correct.

26 
27 Lanie Lim