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Superior Court of California,
County of Alameda

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*Attorneys for Plaintiffs, on behalf of the
Putative Class, the State of California
and Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

KHAYO SISHI, SANDEEP PUREWAL,
VANESSA BARBER, and CHERRA REDD on
behalf of the Putative Class, the State of California
And Aggrieved Employees;

Plaintiffs,

v.

ESKATON PROPERTIES INCORPORATED,
CALIFORNIA HEALTHCARE
CONSULTANTS, INC., and DOES 1-100,
inclusive;

Defendants.

Case No.: RG21100764

**DECLARATION OF CAROLYN HUNT
COTTRELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT,
CERTIFICATION OF SETTLEMENT
CLASS, APPROVAL OF NOTICE OF
SETTLEMENT, AND SETTING OF
HEARING FOR FINAL APPROVAL**

Reservation ID: 677085749399

Date: January 20, 2023
Time: 9:00 a.m.
Dept: 512

1 I, Carolyn Hunt Cottrell, hereby declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California. I am a member
3 in good standing of the State Bar of California, I am admitted to the United States District Courts
4 for the Northern, Eastern, Central, and Southern Districts of California. I am admitted to the Ninth
5 Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme Court.

6 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP ("SWCK").
7 SWCK specializes in class, collective, and PAGA litigation in state and federal court.

8 3. I am counsel of record for Plaintiffs Khayo Sishi, Sandeep Purewal, Vanessa Barber,
9 and Cherra Redd on behalf of themselves and all other similarly situated persons ("Plaintiffs"), in
10 the above-captioned case. I submit this declaration in support of Plaintiffs' Motion for Preliminary
11 Approval of Class Action Settlement, Certification of Settlement Class, Approval of Notice of
12 Settlement, and Setting of Hearing for Final Approval. I am familiar with the file, the documents,
13 and the history related to this case. The following statements are based on my personal knowledge
14 and review of the file. If called to do so, I could and would testify competently thereto.

15 4. A true and correct copy of the fully-executed Class Action Settlement Agreement and
16 Release and Addendum A to Class Action Settlement Agreement and Release (collectively the
17 "Settlement Agreement" or the "Settlement") are attached hereto as **Exhibit 1** and **Exhibit 2**
18 respectively, and a true and correct copy of the agreed upon Settlement Notice is attached hereto as
19 **Exhibit 3**.

20 5. The Parties are in the process of obtaining signatures for Addendum B to Class Action
21 Settlement Agreement and Release, which memorializes the Parties' agreement to include Zenaya
22 White as an additional Class Representative, and Lawyers for Justice PC and Capstone Law APC as
23 additional Class Counsel.

24 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

25 6. SWCK is regarded as one of the leading private plaintiff's firms in wage and hour
26 class actions and employment class actions. In November 2012, the Recorder listed the firm as one
27 of the "top 10 go-to plaintiffs' employment firms in Northern California." The partners and attorneys
28 have litigated major wage and hour class actions, have won several prestigious awards, and sit on
29 important boards and committees in the legal community. SWCK was founded by Todd Schneider
30 in 1993, and I have been a member of the firm since 1995.

31 7. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases
32 which have been certified and/or settled as class actions includes: *Huddleston v. John Christner*

1 *Trucking, LLC*, (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31,
2 2022) (final approval of California and Oklahoma class and FLSA collective action where Plaintiff
3 obtained class certification on behalf of misclassified truck drivers); *Ramirez, et al. v. Rite Aid Corp.,*
4 *et al.*, (Case No. CV 20-3531-GW-SKx) (Central District of California, May 19, 2022) (final
5 approval of California class action and PAGA representative action); *Madrigal v. Mission Lakes*
6 *Country Club, Inc.* (Case No. RIC2003428) (Riverside County Superior Court, May 18, 2022) (final
7 approval of California class action and PAGA representative action); *Hazel v. Himage Solutions,*
8 *Inc.* (Case No. RG20068159) (Alameda County Superior Court, November 2, 2021) (final approval
9 of a California class action settlement for failure to pay for all hours worked, failure to pay minimum
10 and overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business
11 expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor*
12 *Investors, LLC v. FPI Management, Inc.* (Case No. 34-2018-00237315) (Sacramento County
13 Superior Court, October 20, 2021) (final approval of a California class action settlement in action
14 that alleged improper billing for workers compensation charges by an apartment complex
15 management company); *Etcheverry v. Franciscan Health System, et al.* (Case No. 3:19-cv-05261-
16 RJB-MAT) (Western District of Washington, October 19, 2021) (final approval of hybrid Fair Labor
17 Standards Act and Washington class action); *Jean-Pierre, et al. v. J&L Cable TV Services, Inc.* (Case
18 No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021) (final approval of hybrid
19 Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and Pennsylvania class
20 action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-WQH-AHG)
21 (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor Standards Act
22 and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA, Inc., et al.*
23 (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid Fair
24 Labor Standards Act and California Labor Code class action); *Villafan v. Broadpectrum*
25 *Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California,
26 April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action
27 settlement for failure to pay for all hours worked, failure to provide meal and rest breaks,
28 unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage
29 statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC)
30 (Northern District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act
31 and California, Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure
32 to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business expenses,

1 waiting time penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and*
2 *Hour Cases* (Case No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final
3 approval of a class action settlement for failure to pay for all hours worked, failure to provide meal
4 and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to provide
5 itemized wage statements, under California law); *Soto, et al. v. O.C. Communications, Inc., et al.*
6 (N.D. Cal. Oct. 23, 2019) Case No. 3:17-cv-00251-VC, Dkt. Entry No. 305 [final approval of a
7 hybrid Fair Labor Standards Act and California and Washington law Rule 23 action with joint
8 employer allegations]; *Manni v. Eugene N. Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case
9 No. 34-2017-00223592) (Sacramento Superior Court) (final approval of a class action settlement for
10 failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide
11 meal and rest breaks, waiting time penalties, and failure to provide itemized wage statements, under
12 California law); *Van Liew v. North Star Emergency Services, Inc., et al.* (Case No. RG17876878)
13 (Alameda County Superior Court) (final approval of a class action settlement for failure to pay for
14 all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest
15 breaks, failure to reimburse for necessary business expenditures, waiting time penalties, and failure
16 to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.* (Case No.
17 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action settlement
18 for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and rest
19 breaks, failure to reimburse for necessary business expenditures, failure to adhere to California
20 record keeping requirements, waiting time penalties, and failure to provide itemized wage
21 statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No.
22 34-2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for
23 failure to pay wages free and clear, failure to pay overtime and minimum wages, failure to provide
24 meal and rest breaks, failure to pay full wages when due, failure to adhere to California record
25 keeping requirements, and failure to provide adequate seating, under California law); *Aguilar v. Hall*
26 *AG Enterprises, Inc., et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final
27 approval of a class action settlement for failure to provide meal and rest periods, failure to
28 compensate for all hours worked, failure to pay minimum and overtime wages, waiting time
29 penalties, failure to provide itemized wage statements, and failure to pay undiscounted wages, under
30 California law); *Viceral and Krueger v. Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen,
31 J.) (Northern District of California) (final approval of a class and collective action settlement for
32 failure to compensate for all hours worked, including overtime, under federal and California law);

1 *Jeter-Polk, et al. v. Casual Male Store, LLC, et al.*, (Case No. 5:14-CV-00891) (Central District of
2 California) (final approval of a class action settlement for failure to provide meal and rest periods,
3 failure to compensate for all hours worked, failure to pay overtime wages, unpaid wages and waiting
4 time penalties, and failure to provide itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et*
5 *al.*, (Case No. 15-cv-01889-TEH) (Northern District of California) (final approval of class and
6 collective action settlement for failure to compensate for all hours worked, including overtime, under
7 federal and California law, failure to provide meal and rest breaks, failure to reimburse for necessary
8 business uniforms, failure to pay full wages upon termination to, and failure to provide accurate
9 itemized wage statements); *Holmes, et al v. Xpress Global Systems, Inc.*, (Case No. 34-2015-
10 00180822) (Sacramento Superior Court) (final approval of a class action settlement for failure to
11 provide meal and rest breaks and failure to provide accurate itemized wage statements); *Guilbaud,*
12 *et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-04357-VC) (Northern District of California)
13 (final approval of a class and collective action settlement for failure to compensate for all hours
14 worked, including overtime, failure to provide meal and rest breaks, failure to reimburse for
15 necessary business uniforms, failure to pay full wages upon termination to, and failure to provide
16 accurate itemized wage statements); *Molina, et al. v. Railworks Track Systems, Inc.*, (Case No. BCV-
17 15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure to
18 provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clock work, failure to pay full
19 wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al.*
20 *v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern District of California) (settlement
21 between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix*
22 *Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County Superior Court) (final approval
23 of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure
24 to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay
25 full wages upon termination to, and failure to provide accurate itemized wage statements to retention
26 specialists working for cable companies); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case
27 No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for
28 failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice
29 cream manufacturing employees); among many others.

30 8. Nearly my entire legal career has been devoted to advocating for the rights of
31 individuals who have been subjected to illegal pay policies, discrimination, harassment, and
32 retaliation and representing employees in wage and hour and discrimination class actions. I have

1 litigated hundreds of wage and hour, employment discrimination and civil-rights actions, and I
2 manage many of the firm's current cases in these areas.

3 9. I am a member of the State Bar of California, and have had memberships with Public
4 Justice, the National Employment Lawyers Association, the California Employment Lawyers
5 Association, and the Consumer Attorneys of California. I served on the Board of Directors for the
6 San Francisco Trial Lawyers Association and co-chaired its Women's Caucus. I was named one of
7 the "Top Women Litigators for 2010" by the Daily Journal. In 2012, I was nominated for Woman
8 Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super
9 Lawyer every year since 2014. I earned my Bachelor's degree from the University of California, and
10 I am a graduate of the University of the Pacific, McGeorge School of Law.

11 **CASE SUMMARY**

12 **Procedural History**

13 10. On March 15, 2021, Plaintiff Khayo Sishi submitted a letter to the Labor and
14 Workforce Development Agency ("LWDA"), notifying the agency of his intent to file a lawsuit for
15 penalties under the PAGA. He later submitted an amended letter on May 18, 2021 and Plaintiffs
16 further supplemented their letters to the LWDA on August 12, 2022. The LWDA did not issue any
17 response.

18 11. As a result, on June 2, 2021, Plaintiff Sishi filed his Complaint for Penalties Pursuant
19 to Sections 2699(a) and (f) of the California Private Attorneys General Act against Defendant
20 Eskaton Properties Incorporated, and then filed a First Amended Complaint to add Defendant
21 California Healthcare Consultants, Inc. as an additional Defendant on July 28, 2021.

22 12. Defendants filed their Answers on August 6, 2021 and September 15, 2021.

23 13. On August 23, 2021, Plaintiff Sandeep Purewal filed a class action lawsuit against
24 Eskaton Properties Inc. for violations under the California Business & Professions Code Sections
25 17200, *et seq.*

26 14. On September 28, 2021, Plaintiffs Vanessa Barber and Cherra Redd submitted a letter
27 to the LWDA, notifying the agency of their intent to file a lawsuit for penalties under the PAGA.
28 On December 2, 2021, Plaintiffs Vanessa Barber and Cherra Redd filed a lawsuit against Eskaton
29 Properties Inc. for penalties under the PAGA.

30 15. On or about April 4, 2021, Zenaya White submitted a letter to the LWDA notifying
31 the agency of her intent to file a lawsuit for penalties under the PAGA. On June 7, 2021, Zenaya
32 White filed an action against Eskaton; Eskaton Clearlake Oaks Manor; Eskaton Foundation; Eskaton

1 Fountainwood Lodge; Eskaton Frank Jaconetti Senior Manor; Eskaton Lodge Granite Bay; Eskaton
2 Properties, Inc.; Eskaton Roseville Manor; Eskaton Village-Grass Valley; Eskaton Village-
3 Placerville; and Eskaton Village-Roseville, for penalties under the PAGA.

4 16. Following Class Counsel's investigation in this Action, and consolidation of efforts
5 with Lawyers for Justice PC, Plaintiff determined there were additional class action claims and that
6 Plaintiffs Barber, Redd, and Purewal should be added to the First Amended Complaint. The Court
7 ultimately granted the Parties' stipulation for leave to file a Second Amended Complaint to
8 incorporate these additional Plaintiffs and their claims, and the Second Amended Complaint was
9 filed on September 13, 2022.

10 **Discovery and Mediation**

11 17. The Parties agreed to attend early mediation in this action.

12 18. The Parties engaged in extensive informal discovery leading up to mediation, wherein
13 Defendants produced documents and information on an informal basis to facilitate mediation.
14 Pursuant to Class Counsel's requests, Defendants produced hundreds of pages of documents prior
15 to mediation including, but not limited to, applicable written policies, Plaintiff Sishi's personnel file
16 and time and pay records, approximately a 10% sampling of employee payroll data, and payroll
17 calendars for the PAGA period. Defendants further produced class-wide data points, including total
18 class members, total pay periods, total workweeks and shifts, and total former employees, among
19 other data points. Class Counsel completed an exhaustive review of Defendants' documents and data
20 and used the information and data from them to prepare for mediation, including in the preparation
21 of its detailed damages analysis.

22 19. To further their investigation, Class Counsel also engaged in multiple in-depth
23 interviews with putative class members who worked at several locations around the state of
24 California. These interviews covered topics including dates and locations of work, hours of work,
25 pre-shift and post-shift off-the-clock work, meal and rest breaks, reimbursement of work-related
26 expenses, and unpaid medical or physical testing. Through this process, Plaintiffs garnered
27 substantial factual background regarding the alleged violations, which Class Counsel utilized to
28 build their case and to further assess Defendants' potential exposure in this action.

29 20. On February 15, 2022, the Parties conducted a full day mediation session, which was
30 remotely held before well-respected and highly skilled employment law mediator, Jeffrey Krivis.
31 The case did not settle but the Parties agreed to continue negotiations and subsequently scheduled a
32 second mediation for March 4, 2022.

21. Following the first mediation session, Defendants produced additional documents, including, but not limited to, meeting agendas and sign in sheets, timestamp question and answer detail reports, additional policies and training materials, and other pertinent documents. Again, Class Counsel completed an exhaustive review of the documents, and used this information and data to prepare for mediation, including in the preparation of its detailed damages analysis.

22. On March 4, 2022, the Parties conducted a second mediation session, after which the mediator issued a mediator's proposal. The Parties continued to negotiate the scope of the release to ensure a fair recovery for the Class and ultimately accepted the mediator's proposal on March 30, 2022, and signed a term sheet memorializing the major terms of the Parties' agreement on April 8, 2022.

23. The Parties extensively met and conferred over the detailed terms of the settlement over several months through intensive, arm's-length negotiations, and eventually executed the finalized long-form settlement agreement on November 22, 2022.

24. The Parties later agreed to an Addendum A to the Settlement to exclude Plaintiff Barber as a class representative, which was fully executed on December 12, 2022.

25. The Parties are in the process of obtaining signatures for an Addendum B, which memorializes the Parties' agreement to include Zenaya White, as an additional Class Representative, and include Lawyers for Justice PC and Capstone Law APC as additional Class Counsel.

THE SETTLEMENT

Basic Terms and Value of the Settlement

26. The Settlement provides for a non-reversionary Gross Settlement Amount of \$5,500,000.00. Defendants agree to pay the employer's share of payroll taxes separately.

27. Defendants will fund the Gross Settlement Amount within 20 business days after the Effective Date. The payment will be used to pay 100% of the Settlement Awards to Settlement Class Members, the Service Awards, the PAGA payment, Class Counsel fees and costs, and the Settlement Administration costs, upon approval by the Court.

28. With the Motion for Final Approval, to be filed in advance of the Final Approval hearing, Class Counsel will seek fees of no more than one-third (1/3) of the Gross Settlement Amount, or \$ 1,833,333.33, and actual costs, which are currently estimated at \$29,242.97. The Settlement also sets aside \$60,000.00 for the estimated costs of settlement administration; \$10,000

to Class Representative Khayo Sishi and \$5,000.00 each to Class Representatives Sandeep Purewal, Cherra Redd, and Zenaya White for their service to the Class, and \$55,000.00 for PAGA penalties.¹

Class and Aggrieved Employee Definitions

29. An individual is eligible to share in the proposed Settlement if he or she belongs to any of the following:

- “**Class Members**” means all current and former hourly, non-exempt workers employed by Defendants throughout California any time between June 2, 2017 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants.

- “**Aggrieved Employees**” means all current and former hourly, non-exempt workers employed by Defendants or Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton Lodge Granite Bay, Inc., Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O’Connor Woods Housing Corporation, Inc. throughout California any time between March 29, 2020 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants.

30. Based on Class Counsel’s calculations, which incorporates an extrapolation of Defendants’ provided data and documents, there are approximately 5,759 Class Members employed between June 2, 2017 and June 11, 2022.² This Settlement thus covers approximately 5,759 Class Members.

Settlement Awards for Eligible Class Members

31. The estimated Net Settlement Amount available to Class Members totals \$3,497,423.70 and Net PAGA Amount of \$13,750.00 (for a total of \$3,511,173.70). The Net Settlement Amount is to be allocated among and paid to Settlement Class Members (i.e., those Class Members who do not timely opt out of the Settlement) proportionally based on the number of workweeks the Class Member worked.

32. Specifically, for each workweek, or fraction thereof, during which the Settlement Class Member worked for Defendants at any time between June 2, 2017 and June 11, 2022 or

¹ The Parties agree to allocate \$55,000.00 of the Gross Settlement Amount to the settlement of the PAGA claims, which the Parties believe in good faith is a fair and reasonable apportionment. The Settlement Administrator shall pay 75%, or \$41,250.00, of this amount to the LWDA and 25%, or \$13,750.00, the “Net PAGA Amount,” shall be allocated to the Aggrieved Employees, pursuant to Labor Code § 2699(i).

² Defendants represented that as of December 31, 2021, there were approximately 5,600 Class members.

1 Preliminary Approval or any earlier date determined by Defendants, he or she shall be eligible to
2 receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the
3 Class Member worked.

4 33. Each workweek will be equal to one settlement share. The total number of settlement
5 shares for all Settlement Class Members will be added together and the resulting sum will be divided
6 into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied
7 by each Settlement Class Members' number of settlement shares to determine the Settlement Class
8 Members' *pro rata* portion of the Net Settlement Amount.

9 34. For any Aggrieved Employee who worked for Defendants throughout California any
10 time between March 29, 2020 and June 11, 2022 or Preliminary Approval or any earlier date
11 determined by Defendants, he or she shall be eligible to receive an *pro rata* portion of the Net PAGA
12 Amount based on the number of pay periods worked between March 29, 2020 and June 11, 2022 or
13 Preliminary Approval or any earlier date determined by Defendants. The total number of settlement
14 shares for all Aggrieved Employees will be added together and the resulting amount will be divided
15 into the Net PAGA Amount to reach a per share dollar figure. That figure will then be multiplied by
16 each Aggrieved Employee's number of settlement shares to determine the Aggrieved Employees'
17 *pro rata* portion of the Net PAGA Amount.

18 35. Settlement Class Members will each receive a settlement award check without the
19 need to submit a claim form.

20 36. The Settlement Awards will be allocated as follows: any portion of each Settlement
21 Award that is provided from the Net PAGA Amount shall be allocated as penalties. For the
22 remainder of each Settlement Award, one-fourth (1/4) shall be allocated to wages and three-fourths
23 (3/4) shall be allocated to penalties and interest. Settlement Awards will be paid out to Settlement
24 Class Members subject to reduction for all employee's share of withholdings and taxes associated
25 with the wage-portion of the Settlement Awards, for which Settlement Class Members shall be
26 issued an IRS Form W-2. Settlement Class Members will also be issued an IRS Form 1099 for the
27 portions of the Settlement Awards that are allocated to penalties and interest.

28 37. In calculating payments due under this Settlement, the Settlement Administrator will
29 use Defendants' Class List: an electronic database containing the names, last known addresses, last
30 known telephone numbers (if any), last known personal email address (if available), social security
31 numbers or tax ID numbers of each Class Member, along with the total number of workweeks that
32 each Class Member worked in the state of California between June 2, 2017 and June 11, 2022 or

1 Preliminary Approval or any earlier date determined by Defendants. The Class List will also include
2 an indication of whether the Class Member is an Aggrieved Employee and the Defendant and/or
3 Released Parties for whom each Class Member worked and who will be paying that Class Member's
4 share of Employment Taxes.

5 38. To the extent that any Settlement Class Member disputes the number of workweeks
6 that the Settlement Class Member worked, as shown in his or her Settlement Notice, such Settlement
7 Class Members may produce evidence to the Settlement Administrator establishing the dates they
8 contend to have worked for Defendants. Defendants shall review their records and provide further
9 information to the Settlement Administrator, as necessary. The Settlement Administrator shall
10 provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and
11 confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, it shall be
12 presented to the Court for a resolution. The Settlement Administrator will notify the disputing
13 Settlement Class Member of the decision.

14 39. The Settlement Administrator shall mail all Settlement Awards to the Settlement Class
15 Members within 10 days after the Settlement Administrator receives the Gross Settlement Amount,
16 or as soon as reasonably practicable. All Settlement Award checks will remain valid for 180 days
17 from the date of their issuance. The Settlement Administrator will send a reminder letter via U.S.
18 mail and email to those Settlement Class Members with uncashed checks at 90 days remaining, and
19 will place a call at 60 days remaining. The disposition of any uncashed check funds remaining after
20 the check-cashing deadline will depend on the total amount.

21 40. Any funds from uncashed checks will be redistributed either to the Settlement Class
22 Members who cashed their checks if the total residual amount is equal to or greater than \$75,000, or
23 revert to an agreed-upon *cy pres* beneficiary if the total residual amount is less than \$75,000.

24 41. The Parties propose Legal Aid at Work, a non-profit that provides legal services
25 assisting low-income, working families and promotes a better understanding of the conditions,
26 policies, and institutions that affect the well-being of workers and their families and communities,
27 as the *cy pres* recipient, subject to approval by the Court.

28 42. Class Counsel is not aware of any financial or business relationship between Legal
29 Aid at Work and the Plaintiffs or any party, any officer, director or manager of any party, or any
30 attorney or law firm for any party. However, Joshua Konecky, one of the partners at SWCK, is a
31 volunteer member on the board of Legal Aid at Work, but is not paid for his volunteer services.
32

Releases

43. The releases contemplated by the proposed Settlement are tethered to the factual allegations in the operative complaint. Upon Final Approval of the Settlement Agreement and payment of amounts set forth herein, and except as to such rights or claims as may be created by the Settlement Agreement, Plaintiffs and all Class Members who choose not to opt-out of the Settlement shall release and discharge all Releasees, finally, forever and with prejudice, from the claims listed below for the period between June 2, 2017 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants.

44. Class Members who choose not to opt-out of the Settlement will release Defendants and Releasees³ from any and all claims that are or could have been alleged in the operative complaints against Defendants and Releasees, and the Second Amended Complaint that the Parties stipulate to in the Action, including but not limited to claims under California Labor Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, and 2810.5, reporting time wages, and violations of California Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200, et seq.), and any amendment(s) thereto based on the factual allegations contained therein.

45. Plaintiffs and the Aggrieved Employees fully release the claims and rights to recover civil penalties against Defendants and Releasees on behalf of the LWDA and Aggrieved Employees, to recover civil penalties, costs, expenses, attorneys' fees, or interest against the Releasees on behalf of Aggrieved Employees and LWDA for any Labor Code or Wage Order violation alleged or could have been alleged in any Complaint or PAGA letters, including but not limited to the Second Amended Complaint and amended PAGA letter, in the Action, including violations of the following: California Labor Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2810.5, and reporting time wages. The release period for PAGA claims

³ "Releasees" or "Released Parties" means Defendants and their present and former parent companies, subsidiaries, related or affiliated companies, and their 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, including Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton Lodge Granite Bay, Inc., Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O'Connor Woods Housing Corporation, Inc., and Defendants' Counsel.

1 runs from March 29, 2020 to June 11, 2022 or Preliminary Approval or any earlier date determined
2 by Defendants.

3 46. Khayo Sishi, Sandeep Purewal, Cherra Redd, and Zenaya White (“Class
4 Representatives”) also agree to a general release.

5 **Settlement Administration**

6 47. The Parties selected Settlement Services, Inc. (“SSI”) as the Settlement Administrator.
7 SSI will satisfy due process requirements in notifying Class Members of the settlement and
8 distributing Settlement Awards according to the Settlement. If the Settlement is finally approved,
9 SSI will administer payments to the Settlement Class Members, including calculation of payroll
10 taxes and preparation of tax reporting documents.

11 48. Within 20 business days after the Court’s Preliminary Approval of the Settlement,
12 Defendants shall provide to the Settlement Administrator the Class List (and to Class Counsel a
13 redacted Class List) containing: an electronic database containing the names, last known addresses,
14 last known telephone numbers (if any), last known personal email address (if available), social
15 security numbers or tax ID numbers of each Class Member, along with the total number of
16 workweeks that each Class Member worked in the state of California between June 2, 2017 and June
17 11, 2022 or Preliminary Approval or any earlier date determined by Defendants. The Class List will
18 also include an indication of whether the Class Member is an Aggrieved Employee and the
19 Defendant and/or Released Parties for whom each Class Member worked and who will be paying
20 that Class Member’s share of Employment Taxes.

21 49. The Settlement Administrator will then distribute the Settlement Notice via mail and
22 email, calculate individual settlement payments, calculate all applicable payroll taxes, withholdings
23 and deductions, and prepare and issue all disbursements to Plaintiffs, Class Members, the LWDA,
24 Class Counsel, itself, and applicable state, and federal tax authorities.

25 50. It is the responsibility of the Settlement Administrator to timely and properly withhold
26 all applicable payroll and employment taxes from Settlement Awards payable to Settlement Class
27 Members, as set out in the proposed Agreement. It is also the responsibility of the Settlement
28 Administrator to prepare and deliver the necessary tax documentation. After those tasks are
29 complete, the Settlement Administrator will assure that the appropriate deposits of withholding taxes
30 and informational and other tax return filing occur. Each Settlement Class Member’s share of all
31 applicable payroll and employment taxes withheld and deposited with the applicable governmental
32 authorities in accordance with this Settlement shall be a part of, and paid out of, the Settlement

1 Awards to each Settlement Class Member. Each Settlement Class Member will be responsible for
2 paying all applicable state, local, and federal income taxes on all amounts the Settlement Class
3 Member's receives pursuant to the proposed Settlement.

4 51. The Settlement Administrator will establish a settlement website that will allow Class
5 Members to view the Settlement Notice (in generic form), the Settlement Agreement, and all papers
6 filed by Class Counsel to obtain preliminary and final approval of the Settlement. The Settlement
7 Administrator will also establish a toll-free call center for telephone inquiries from Class Members.

8 52. Prior to the initial mailing, SSI will take reasonable efforts to identify current
9 addresses via public and proprietary systems, as needed. Should any Settlement Notice be returned
10 as undeliverable, but with a forwarding address attached, SSI will re-mail them to the updated
11 address within three business days following receipt of the returned mail. Should any Settlement
12 Notice be returned as undeliverable without a forwarding address, SSI will make reasonable efforts
13 to locate forwarding addresses, including a skip trace, and if it obtains a more recent address, will
14 resend the Settlement Notice.

15 53. The Notice Deadline is sixty (60) days after the Settlement Administrator first mails
16 the Settlement Notice to the Class Members.

17 54. Ten business days after the Notice Deadline, SSI will provide a report showing: (i) the
18 names of Class Members; (ii) the Settlement Awards owed to each Class Member; (iii) the final
19 number of Class Members who have submitted objections or valid letters requesting exclusion from
20 the Settlement; and (iv) the number of undeliverable Settlement Notices. Upon completion of
21 administration of the Settlement, the Settlement Administrator shall provide written certification of
22 such completion to counsel for all Parties and the Court. This written certification shall include the
23 total number of Settlement Class Members (including the total number of Class Members who
24 requested exclusion), the average recovery per Settlement Class Member, median recovery per
25 Settlement Class Member, the largest and smallest amounts paid to Settlement Class Members, and
26 the number and value of checks not cashed.

27 55. Class Members who wish to exclude themselves from the Settlement must mail to the
28 Settlement Administrator a written statement indicating that they do not wish to participate or be
29 bound by the Settlement. The written request for exclusion must contain the Settlement Class
30 Member's full name, address, telephone number, email address (if applicable), and last four digits
31 of their social security number, and must be signed individually by the Class Member. Such written
32 statement must be postmarked by the Notice Deadline or will be deemed untimely and invalid. Any

request for exclusion that does not contain all information required in this paragraph will be deemed invalid. Class Members who do not submit a request for exclusion will be bound by the Settlement Agreement and any judgment entered in the lawsuit if the Settlement is approved by the Court.

56. In order to object to the Settlement, a Class Member must send his or her objection to the Settlement Administrator no later than the Notice Deadline. Such objection shall not be valid unless it includes the information specified in the Settlement Notice. The statement must be signed personally by the objector, and must include the objector's name, address, telephone number, email address (if applicable), the factual and legal grounds for the objection, and whether the objector intends to appear at the Final Approval Hearing. Absent good cause found by the Court, Class Members who fail to make timely written objections in the manner specified above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

57. Defendants agree to make the payment to the Settlement Administrator within 20 business days of the Effective Date.

58. The "Effective Date" of the Settlement means (i) if there is an objection(s) to the settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court's Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an objector(s), then after such appeal(s) is dismissed or the Court's Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court's order granting Final Approval of the Settlement.

59. Within 10 business days after the check cashing deadline, the Settlement Administrator shall provide counsel a report regarding the total amount of any funds that were paid to the Settlement Class Members and remain from checks that are returned as undeliverable or are not negotiated. Class Counsel will then submit a post-judgment report to the Court regarding any funds that remain from such checks.

PRELIMINARY APPROVAL OF THE SETTLEMENT AS TO THE CLASS

Preliminary Approval of the Settlement Is Appropriate

60. The Settlement proposed herein is based on arm's-length negotiations that were guided by Class Counsel's investigation and the evaluation of informal discovery. The negotiations included extensive communications between Class Counsel and counsel for Defendants and two

1 separate mediation conferences supervised by an experienced and respected mediator. The proposed
2 Settlement provides substantial monetary recovery for the Settlement Class, and it satisfies all of the
3 required due process protections.

4 61. The estimated amount to be distributed to Settlement Class Members, including the
5 Net Settlement Amount (\$3,497,423.7) and Net PAGA Amount (\$13,750.00) (for a total of
6 \$3,511,173.70), will result in fair and just relief to all members of the Settlement Class.

7 62. This amount will be available to the approximately 5,759 Class Members, exclusive
8 of attorneys' fees and costs, administrative costs and other expenses, payment to the LWDA, and
9 the service awards.

10 63. The Net Settlement Amount together with the Net PAGA Amount, provides an
11 estimated average recovery of \$609.68 per Settlement Class Member, assuming full participation of
12 all Class Members. Considering the difficulty and risks presented by continuing this class and
13 representative litigation, the result is within the reasonable standard.

14 64. To facilitate settlement negotiations, Class Counsel investigated the applicable law
15 and the facts in this case and extensively analyzed the potential damages that might be recovered
16 following the exchange of documents and information with Defendants. Defendants provided
17 informal discovery including, but not limited to, applicable written policies, Plaintiff Sishi's
18 personnel file and time and pay records, a sampling of employee payroll data, and payroll calendars
19 for the PAGA period, and then produced additional documents after the first mediation. Class
20 Counsel used this information to perform a careful and extensive analysis of the effects of
21 Defendants' compensation policies and practices on Class Members' pay.

22 65. The damages analysis provided a benchmark for the Class Representatives and Class
23 Counsel to gauge settlement offers. Accordingly, the Settlement was agreed upon following an
24 extensive review of the facts and law in this case.

25 66. Based on Class Counsel's investigation, interviews with multiple Class Members, and
26 analysis of Defendants' data, Class Counsel determined that Class Members worked off the clock
27 an average of 4.5 minutes per day, were subject to a 45% violation rate for meal breaks and 57%
28 violation rate for rest breaks per shift, and were required to pay approximately \$129.26 for necessary
29 business expenses and/or medical testing on average without reimbursement. Based on Defendants'
30 data, Class Members worked an average of 4 hours per shift, worked an average of 86.84 shifts over
31 5 hours per Class Member, worked an average of 5.57 shifts over 8 hours per Class Member, and
32 were paid an average of 3.03 meal and rest period premiums per Class Member. Applying these

inputs and further data points to Defendant's compensation policies, Plaintiffs prepared an exposure analysis that provided the estimated potential recovery for each cause of action.

67. For purposes of estimating Defendants' exposure, Class Counsel ran an analysis with the following assumptions: based on their analysis and investigation, that Plaintiffs and the putative Class fully prevail on all causes of action and can prove 4.5 minutes of unpaid overtime for all shifts over 8 hours a day, and can prove missed meal and rest periods per week for each Class Member for 45% and 57%, respectively, of all shifts worked. To estimate the premium rate penalties, and waiting time penalties, Class Counsel used the actual hourly rates of pay for each class member as provided by Defendants, and presumed an average of eight hours per day, one 30-minute meal break per qualifying shift, and two rest periods per qualifying shift. Using the pay rates of each employee provided by Defendants, Class Counsel calculated the average rates of pay for each employee for the duration of the class period. To estimate penalties under the PAGA, Class Counsel estimated 1 PAGA violation was made per pay period, per Aggrieved Employee, within the PAGA period.

68. Based on Class Counsel's investigation, as well as an analysis of the data, documents, and information provided by Defendants, Class Counsel determined that Defendants' total potential exposure for the estimated 5,759 California Class Members and Aggrieved Employees is approximately \$43.3 million.

69. Class Counsel estimates the total approximate damages per claim are as follows: \$4.45 million for the meal break violations, \$5.64 million for the rest break violations, \$72,770 for the overtime damages, \$1.75 million for the off-the-clock violations at the regular rate, \$744,408 for expense reimbursement violations under Sections 2802 and 222.5, \$9.28 million for the wage statement violations, \$9.84 for waiting time penalties, and \$11.52 million for civil penalties under the PAGA. Using the high-end assumptions described above, Class Counsel determined Defendants' total potential exposure as to the class and PAGA claims amounted to approximately \$43.3 million.⁴

70. Class Counsel calculated the above as follows: (1) meal and rest break damages per employee based on employees' average regular rate of pay, deducted by employees' paid average meal period premiums; (2) overtime damages, per employee based on employees' average regular rate of pay, then multiplied that by the average post-shift work per employee; (3) off-the-clock work

⁴ Class Counsel further determined that sick pay would have been applicable to approximately 12% of all pay periods, for a total of \$510,000 in damages. However, given the majority trend among district and superior courts addressing sick pay and finding that no private right of action for sick pay exists under California law, Class Counsel accordingly discounted this amount from their exposure analysis.

1 damages at the regular rate of pay per employee based on employees' average rate of pay during the
2 class period instead of the overtime rate; (4) damages for unreimbursed business expenses for each
3 class member; (5) wage statement penalties based on a cap of \$4,000 per employee; and (6) waiting
4 time penalties per each employee who separated from employee during the class period based on the
5 pay rate for the year separated multiplied by thirty. Finally, as to PAGA penalties, Class Counsel
6 calculated the pay periods at issue during the relevant PAGA period and calculated \$100 for each
7 initial violation, and \$100 for each subsequent violation.

8 71. There are currently no facts known to Class Counsel that would suggest the imposition
9 of the agreed-upon total amount of statutory penalties asserted herein would be unjust, arbitrary,
10 oppressive, or confiscatory. Moreover, the amount of the agreed-upon penalties at issue with this
11 settlement are fair, because those amounts were agreed upon after ample pre-mediation and post-
12 mediation discovery, and after thorough, lengthy, and adversarial arm's-length negotiations during
13 and following mediation (which was overseen by a talented, experienced, thoughtful, thorough, and
14 well-respected mediator).

15 72. The Settlement represents 43% of the Defendants' total substantive potential exposure
16 estimated at \$12.6 million, which represents Defendants' exposure for core claims for unpaid wages,
17 meal and rest breaks, and expense reimbursements that would have been owed to the Class Members.

18 73. The Gross Settlement Amount further represents approximately 13% of the estimated
19 Defendants' total potential exposure of \$43.3 million, including derivative and PAGA claims.

20 74. To obtain such amounts, Plaintiffs and the putative Class would have been required to
21 fully prevail on all causes of action and prove that Plaintiffs and the Class indeed were subject to the
22 assumed violation rates noted above.

23 75. Absent this Settlement, it is estimated that Class Counsel's fees and costs would far
24 exceed \$2,000,000.00 to pursue these claims on behalf of Class Members. Litigating the class claims
25 in this action would require substantial discovery including the depositions of current and former
26 employees and experts, extensive motion practice, as well as the consideration, preparation, and
27 presentation of voluminous documentary evidence and the preparation and analysis of expert reports.

28 76. In contrast, the Settlement will yield a prompt, certain, and substantial recovery for
29 Class Members. Such a result will benefit the Parties and the court system. The proposed
30 \$5,500,000.00 Settlement achieves a just and beneficial result. In light of the challenges that
31 Plaintiffs would likely face, the proposed Settlement is extremely reasonable.

1 77. The reasonableness of the Settlement is further underscored by the fact that
2 Defendants have legal and factual grounds available to defend this action. Defendants posit that this
3 case is not suitable for class treatment, that they fully complied with their obligations under the
4 Labor Code, and that Plaintiffs and the Class Members are not entitled to damages, penalties, or
5 other relief sought.

6 78. Plaintiffs would face significant risks if the litigation were to proceed to trial.
7 Plaintiffs would need to establish class-wide liability and prove up various issues regarding damages
8 and penalties. Such efforts would likely take many more months, if not years, and would necessitate
9 expert witness testimony and significant additional litigation.

10 79. While Plaintiffs are confident that they would establish that common policies and
11 practices give rise to the off-the-clock work for Class Members, Plaintiffs acknowledged that the
12 off-the-clock work was performed by hourly employees holding various job titles at dozens of
13 different locations around California, and whether all such work was under the control of Defendants
14 would be heavily contested. With differing facilities' physical layouts, supervisors, and the nature
15 of the work varying by location, Plaintiffs recognize that obtaining class certification would present
16 a significant obstacle, with the risk that the Class Members could only pursue individual actions in
17 the event that certification was denied. Certification of off-the-clock work claims is further
18 complicated by the lack of documentary evidence and reliance on employee testimony, and Plaintiffs
19 would likely face motions for decertification as the case progressed.

20 80. Plaintiffs' claims regarding business expense reimbursements and for unpaid medical
21 or physical examinations would be equally difficult to certify for class treatment, given that the
22 nature and amounts of such expenses may vary based on the individualized circumstances of each
23 worker, and given that evidence of such expenses would be complicated by the lack of documentary
24 evidence and reliance on employee testimony.

25 81. Additionally, Plaintiffs' derivative claims regarding wage statements rise and fall with
26 Plaintiffs' other wage and hour claims. While Plaintiffs believe that they would prevail on these
27 issues, they recognize the risk that a fact finder may find for Defendants on one or more of these
28 issues and may find damages to be significantly less than what Plaintiffs claims.

29 82. Plaintiffs would further likely need to move for and defend against motions for
30 summary judgment or adjudication, and would have been further required to take their claims to
31 trial.
32

83. Defendants, represented by experienced employment lawyers, raised the above arguments, and more, in mediation and would have done so in continued litigation. Despite Plaintiffs' confidence in their ability to prove their claims on a Class-wide basis, any of the defenses, if decided in Defendants' favor, could have reduced or even eliminated any potential damages award.

84. Based on Class Counsel's knowledge and expertise in this area of law, I believe this Settlement will provide a substantial benefit to the Class Members, well within the range of reasonableness.

Class Certification

85. The benefits and efficiencies of this proposed Settlement, when compared to continued litigation on either a class basis or through multiple individual suits, justifies certification of the Settlement Class.

86. Plaintiffs have defined the Settlement Class according to objective criteria: all current and former hourly, non-exempt workers employed by Defendants throughout California any time between June 2, 2017 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants. The Settlement Class Members are easily identifiable and can be easily located.

87. With approximately 5,759 Class Members, joinder is impracticable and the numerosity requirement is satisfied.

88. Common questions of law and fact also predominate in this action, which favors certification. Here, Defendants' class-wide policies and procedures raise common issues of law and fact that are applicable to the claims of the Class Representatives and Class Members. Plaintiffs allege that Defendants have uniform timekeeping, payroll, compensation, overtime, minimum wage, reimbursement, sick time, meal and rest period, overtime, and other policies and practices applicable to all non-exempt hourly employees. Defendants have uniform policies applicable to all non-exempt hourly employees at issue in this Action. Specifically, they are subject to uniform timekeeping, payroll, compensation, overtime, minimum wage, reimbursement, sick time, meal and rest period, overtime, and other policies and practices. There are common factual issues that apply to the Class Members, such as Defendants' alleged failures to pay for all hours worked (including minimum wage and overtime), provide uninterrupted meal and rest breaks, pay for all necessarily business expenses, provide accurate itemized wage statements, and provide all wages at separation of employment, among others. These standardized policies and procedures are dictated by Defendants and apply to all of the Class Members.

1 89. The Class Representatives are members of the Class they seek to represent. The Class
2 Representatives, like Class Members, were subject to the policies and practices that form the basis
3 of the claims asserted. Plaintiffs claim they were denied meal and rest breaks, compensation for all
4 hours worked (including overtime and minimum wages), compliant meal and rest breaks, costs for
5 medical examination and other necessary expenses, proper calculation of sick pay, written notice of
6 material terms of employment, accurate itemized wage statements, and payment at separation of
7 employment. Like the Class Representatives, Class Members were subjected to the same allegedly
8 illegal policies and practices to which Plaintiffs were subjected and the Class claims are based on
9 the same legal theory. Interviews with Class Members and review of timekeeping and payroll data
10 confirm to Plaintiffs that the employees throughout California were subjected to the same alleged
11 illegal policies and practices to which the Class Representatives were subjected. Accordingly, the
12 Class Representatives are members of the Class they seek to represent, and their claims are “typical”
13 of those asserted by other Class Members.

14 90. The Class Representatives will fairly and adequately represent and protect the interests
15 of the Class. There is no conflict between the Class Representatives and the proposed Class
16 Members. The Class Representatives’ claims are in line with those of the Class Members, and the
17 Class Representatives have prosecuted this case with the interests of the Class Members in mind.
18 Furthermore, Class Representatives selected counsel with extensive experience in class action and
19 employment litigation, including wage and hour class actions, who do not have any conflict with the
20 Class Members.

21 91. The Class Representatives are adequate class representatives, and Schneider Wallace
22 Cottrell Konecky LLP, Lawyers for Justice PC, and Capstone Law APC are appropriate Class
23 Counsel.

24 92. I feel strongly that the proposed Settlement achieves an excellent result for the Class
25 Members.

26 93. Defendants have agreed that for settlement purposes only, that the requisites for
27 establishing class action certification under Cal. Civ. Code Proc. § 382 are met.

28 **SERVICE AWARDS**

29 94. The unopposed payments to Plaintiff Sishi in the amount of \$10,000.00, and \$5,000
30 each to the other Class Representatives are reasonable in light of the efforts they made and the risks
31 they took in filing and prosecuting the action(s) to obtain this \$5,500,000.00 Settlement.
32

95. Due to Plaintiffs' efforts and their willingness to step forward, the Class Members will receive significant recoveries if the Settlement is approved. If they did not serve as Plaintiffs and Class Representatives, the matter may never have been brought. The Class Members would not get any recovery and Defendants' alleged conduct would have gone unchecked.

96. In agreeing to serve as Class Representatives, Plaintiffs Sishi, Purewal, Redd, and Zenaya White accepted the responsibilities of representing the interests of all Class Members. The Class Representatives have committed their time to the case(s) and assumed significant risk to obtain the result. Their service in a wage and hour class action lawsuit may be discerned by potential employers and members of the community, creating a very real risk of future repercussions, particularly with respect to their future job opportunities.

97. Throughout this litigation, the Class Representatives worked with counsel and assisted in the development of the case. Plaintiff Sishi produced documents relied upon by Class Counsel in mediation, and answered Class Counsel's questions in developing its position for mediation. The Class Representatives further provided Class Counsel with pivotal information and/or took part in the Settlement decision, have remained apprised of the case at all times; and have all agreed to a broader releases.

98. Defendants do not oppose the requested payments to the Class Representatives as reasonable service awards.

ATTORNEYS' FEES AND COSTS

99. Plaintiffs seeks reasonable attorneys' fees and expenses from the \$5,500,000.00 Gross Settlement Amount.

100. Under the terms of the Settlement, Class Counsel may seek an award of up to one-third of the Gross Settlement Amount, or \$1,833,333.33, plus reimbursement of actual costs, which are currently estimated at \$29,242.97⁵, and will do so in their fee motion to be submitted with the final approval papers.

101. Plaintiffs believe this amount is reasonable, and will provide further support in conjunction with their motion for final approval.

102. Class Counsel will provide their lodestar information with their fee motion, which will demonstrate the reasonableness of their rates and hours expended.

⁵ Lawyers for Justice, PC informed my office that their costs were \$4,836.95 on December 5, 2022. Capstone Law APC informed by office that its costs were \$2,747.48 on December 15, 2022. SWCK's costs were \$21,658.54 as of November 17, 2022.

1 103. In this case, given the excellent results achieved, the effort expended litigating the
2 Action and efforts made to settle early, such an award is reasonable.

3 104. There was no guarantee of compensation or reimbursement. Rather, Class Counsel
4 have undertaken all the risks of this litigation on a completely contingency fee basis. In the *Wal-*
5 *Mart v. Dukes* era—a decision that does not eliminate employment class actions, but which
6 nonetheless underscores the difficulties and uncertainties in prevailing—the risks inherent in
7 litigating large, employment class actions are great. Even a favorable ruling on class certification
8 faces a significant risk of reversal by an appellate court. The inherent risk of proving liability and
9 damages on a Class-wide basis and Defendants’ representation by skillful counsel confront Class
10 Counsel with the prospect of recovering nothing or close to nothing for their commitment to and
11 investment in the case.

12 105. Nevertheless, the Class Representatives and Class Counsel have committed
13 themselves to developing and pressing Plaintiffs’ legal claims to enforce the employees’ rights and
14 maximize the Class recovery. During the litigation, counsel had to turn away other, less risky cases
15 to remain sufficiently resourced for this one. The challenges that Class Counsel had to confront and
16 the commitment and risks they had to fully absorb on behalf of the class here are precisely the
17 reasons for multipliers in contingency fee cases.⁶ As Settlement Class Members will receive a
18 significant payment if the Settlement is approved, Class Counsel seek a reasonable fee award for
19 their efforts and the risk they have assumed.

20 106. Attorneys who litigate on a wholly or partially contingent basis expect to receive
21 significantly higher effective hourly rates in cases where compensation is contingent on success,
22 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not
23 result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant
24 financial risk on behalf of a client rightfully expects that his or her compensation will be significantly
25 greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the
26 greater the risk, the greater the “enhancement.”

27 107. For these reasons, Class Counsel respectfully submits that a one-third recovery for
28 fees is appropriate. The lodestar amount will increase with preparation of the final approval papers,
29

30 ⁶ Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) [“A contingent fee must be higher
31 than a fee for the same legal services paid as they are performed... because the risk of default (the
32 loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of
conventional loans”].

1 preparation and attendance at remaining hearings, correspondence and communications with Class
2 Members, and settlement administration and oversight.

3 108. Class Counsel also requests reimbursement for their litigation costs. Reasonable
4 litigation expenses are ordinarily included in an award of attorneys' fees pursuant to California wage
5 and hour law. Class Counsel's litigation costs are currently estimated at \$29,242.97. All of the
6 expenses were reasonable, were necessary to the prosecution, and are customarily billed to fee-
7 paying clients.

8 109. Class Counsel's efforts resulted in an excellent settlement, and the requested fee award
9 is reasonable under the circumstances. The fee and costs award should be preliminarily approved as
10 fair and reasonable.

11 **THE NOTICE OF SETTLEMENT AND RELATED ADMINISTRATION**

12 110. The Settlement Notice, attached hereto as **Exhibit 3**, and manner of distribution were
13 negotiated and agreed upon by the Parties.

14 111. All Class Members will be identified, and the Notice of Settlement will be mailed
15 directly to each Class Member, and emailed to those for whom Defendants have an email address.

16 112. The Settlement Administrator will establish a toll-free number for inquiries from Class
17 Members as well as a settlement website that provides a generic form of the Notice, the Settlement
18 Agreement, and other case related documents and contact information

19 113. Reasonable steps will be taken to ensure that all Class Members receive the Settlement
20 Notice. Prior to the mailing, SSI will check the addresses provided by Defendants through the
21 National Change of Address System, if necessary. If a Settlement Notice is returned as
22 undeliverable, SSI will perform a skip trace and resend the notice.

23 114. The proposed Settlement Notice is clear and straightforward, and provides
24 information on the case, the meaning and nature of the proposed Settlement, its terms and provisions,
25 the rights of the Class Members to participate, opt out, and object, the monetary awards that the
26 Settlement will provide to Settlement Class Members, the Class release, the date, time, and location
27 of the Final Approval hearing, and contact information for Class Counsel.

28 115. The proposed Notice fulfills the requirement of neutrality in class notices. It
29 summarizes the proceedings necessary to provide context for the Settlement and summarizes the
30 terms and conditions of the Settlement, including an explanation of how the Settlement amount will
31 be allocated between the Plaintiffs, Class Counsel, the LWDA, the Settlement Administrator, and
32 Settlement Class Members. The proposed Settlement Notice also describes the release of claims to

1 which Settlement Class Members will be subject if they participate in the Settlement. Moreover, this
2 summary is presented in an informative, coherent and easy-to-understand manner, all in compliance
3 with the Manual for Complex Litigation's recommendation that "the notice contain a clear, accurate
4 description of the terms of the settlement."

5 116. The Settlement Notice clearly explains the procedures and deadlines for opting out of
6 the Settlement or submitting objections, the consequences of taking or foregoing the various options
7 available to Class Members. The proposed Notice also sets forth the amount of attorneys' fees and
8 costs sought by Class Counsel. In addition, the Settlement Notice clearly states that the Settlement
9 does not constitute an admission of liability by Defendants. Finally, it makes clear that the final
10 settlement approval decision has yet to be made.

11 117. Based on the foregoing, the Settlement Notice complies with the standards of fairness,
12 completeness, and neutrality required of a settlement class notice disseminated under authority of
13 the Court.

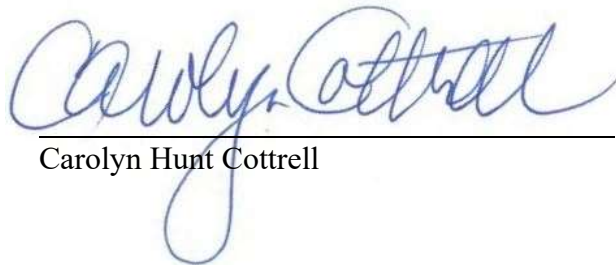
14 **SUBMISSION TO THE LWDA**

15 118. Concurrently with this Motion, my office will serve the Settlement, in the form
16 attached hereto as **Exhibit 1** and **Exhibit 2**, and Plaintiffs' Memorandum of Points and Authorities
17 in support of this motion, on the LWDA, through the online PAGA document submission system.
18 Usage of this online system is the required means to transmit documents to the LWDA.

19
20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct and is based on my own personal knowledge.

22 Executed this 22nd day of December 2022, in Auburn, California.

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Carolyn Hunt Cottrell

EXHIBIT 1

Carolyn H. Cottrell (SBN 166977)
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ESKATON PROPERTIES INCORPORATED and
CALIFORNIA HEALTHCARE CONSULTANTS, INC.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

KHAYO SISHI, on behalf of the State of
California;

Plaintiff,

v.

ESKATON PROPERTIES INCORPORATED,
CALIFORNIA HEALTHCARE
CONSULTANTS, INC., and DOES 1-100,
inclusive;

Defendants.

Case No.: RG21100764

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 1. This Class Action Settlement Agreement and Release (the “Settlement Agreement,”
3 “Settlement” or “Agreement”) is entered into between Plaintiffs Khayo Sishi, Sandeep Purewal,
4 Vanessa Barber, and Cherra Redd (“Plaintiffs”), individually and on behalf of all other similarly-
5 situated persons, the State of California, and the Aggrieved Employees, and Defendants Eskaton
Properties Incorporated and California Healthcare Consultants, Inc. (“Defendants”), subject to the
approval of the Court. Plaintiffs and Defendants are collectively referred to as the “Parties.”

6 **DEFINITIONS**

7 2. The following terms used in this Settlement Agreement shall have the meanings
8 ascribed to them below:

9 a. “Action” means the above-captioned action, *Khayo Sishi, et al. v. Eskaton*
10 *Properties, Inc., et al.*, Superior Court of California, County of Alameda, Case Number
RG21100764.

11 b. “Class Members” means all current and former hourly, non-exempt workers
12 employed by Defendants throughout California any time between June 2, 2017 and June 11, 2022
13 or Preliminary Approval or any earlier date determined by Defendants. Defendants represent that as
of December 31, 2021, there were approximately 5,600 Class members and an estimated 365,000
workweeks.

14 c. “Settlement Class” or “Settlement Class Members” means Class Members
15 who do not submit a valid letter requesting to be excluded from the Settlement, consistent with the
16 terms set forth in this Settlement Agreement, and did not otherwise release the claims referenced
below by the date of the mediation.

17 d. “Aggrieved Employees” means all current and former hourly, non-exempt
18 workers employed by Defendants or Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton
Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton Lodge Granite Bay, Inc.,
19 Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O’Connor Woods
Housing Corporation, Inc. throughout California any time between March 29, 2020 and June 11,
20 2022 or Preliminary Approval or any earlier date determined by Defendants. Defendants represent
that as of December 31, 2021, there were approximately 3,500 Aggrieved Employees.

21 e. “Class Counsel” means Schneider Wallace Cottrell Konecky LLP.

22 f. “Class Counsel’s Costs” refers to the amount of reasonable litigation expenses
23 Class Counsel incurred in connection with this Action, which shall be Class Counsel’s actual costs,
including costs incurred for their pre-filing investigation, their filing of the Action and all related
24 litigation activities, and all post-Settlement compliance procedures. As of April 14, 2022, Class
Counsel’s Costs are \$ 20,797.53.

25 g. “Court” means the Superior Court of California, County of Alameda.

26 h. “Defendants” means Eskaton Properties Incorporated and California
27 Healthcare Consultants, Inc.

28 i. “Defendants’ Counsel” means Gordon Rees Scully Mansukhani, LLP.

j. “Effective Date” means (i) if there is an objection(s) to the settlement that is

not subsequently withdrawn, then the date upon the expiration of time for appeal of the Court's Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an objector(s), then after such appeal(s) is dismissed or the Court's Final Approval Order is affirmed on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were filed are withdrawn before the date of final approval, then the first business day after the Court's order granting Final Approval of the Settlement.

k. "Fee Award" means the award of attorneys' fees that the Court authorizes to be paid to Class Counsel for the services they rendered to Plaintiffs and the Settlement Class Members in the Action. Class Counsel will not seek more than one-third of the Gross Settlement Amount, or \$1,833,333.33, as their Fee Award.

l. "Final" shall mean, with respect to a judgment or order, that the judgment or order is final and appealable and either (a) no appeal, motion, or petition to review or intervene has been taken with respect to the judgment or order as of the date on which all times to appeal, move, or petition to review or intervene therefrom have expired, or (b) if an appeal, motion or petition to intervene or other review proceeding of the judgment or order has been commenced, such appeal, motion or petition to intervene or other review is finally concluded and no longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the judgment or order in its entirety. Notwithstanding the foregoing, any proceeding, order, or appeal pertaining solely to the award of attorneys' fees, attorneys' costs, or any Service Awards shall not by itself in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming "Effective."

m. "Final Approval" or "Final Approval Order" means the Court's Final Approval Order approving the Settlement and entering judgment.

n. "Final Approval Hearing" means the hearing to be held by the Court to consider the Final Approval of the Settlement.

o. "Gross Settlement Amount" means the non-reversionary total amount that Defendants shall pay in connection with this Settlement, including any interest earned on such funds, in exchange for the release of the Settlement Class Members' Released Claims. The Gross Settlement Amount is the gross sum of Five Million Five Hundred Thousand Dollars (\$5,500,000.00). The Gross Settlement Amount includes: (a) all Settlement Awards to Settlement Class Members and Aggrieved Employees; (b) civil penalties under the Private Attorneys General Act ("PAGA"); (c) Plaintiffs' Service Awards; (d) Attorneys' Fees and Costs to Class Counsel, and (e) Settlement Administration Costs to the Settlement Administrator. Except for Defendants' employer-side taxes on Settlement Awards to Settlement Class Members ("Defendants' Payroll Taxes"), the Parties agree that Defendants will have no obligation to pay any amount in connection with this Settlement Agreement apart from the Gross Settlement Amount and Defendants' Payroll Taxes. There will be no reversion.

p. "Gross PAGA Amount" means the amount apportioned from the Gross Settlement Amount designated as payment of civil penalties pursuant to PAGA, or Fifty-Five Thousand Dollars (\$55,000.00)

q. "Net PAGA Amount" means the amount apportioned from the Gross Settlement Amount designated as payment to the Aggrieved Employees in the amount of Twenty-Five Percent (25%) of the Gross PAGA Amount, or Thirteen Thousand Seven Hundred and Fifty

Dollars (\$13,750.00). This amount shall be distributed on a *pro rata* basis to the Aggrieved Employees. The Labor and Workforce Development Agency (“LWDA”) shall receive the remaining Seventy-Five Percent (75%) of the Gross PAGA Amount, or Forty-One Thousand and Two Hundred and Fifty Dollars (\$41,250.00).

r. “Net Settlement Amount” means the Gross Settlement Amount less: (i) Service Awards; (ii) Fee Award; (iii) Class Counsels’ Costs; (iv) Settlement Administrator Costs; and (v) the payment to the LWDA for its share of PAGA penalties. The Parties acknowledge that all of these amounts are subject to the Court’s approval.

s. “Notice Deadline” means the date sixty (60) days after the Settlement Notice is initially mailed to the Settlement Class. Class Members shall have until the Notice Deadline to object to, or request exclusion from the Settlement.

t. “Parties” means the parties to this Agreement: Plaintiffs; Eskaton Properties Incorporated; and California Healthcare Consultants, Inc.

u. “Preliminary Approval” or “Preliminary Approval Order” means the Court’s Preliminary Approval Order preliminarily approving the terms and conditions of this Agreement.

v. “Qualified Settlement Fund(s)” means a qualified settlement fund(s) under Section 468B of the Internal Revenue Code established by the Settlement Administrator for the purpose of administering this Settlement.

w. “Releasees” or “Released Parties” means Defendants and their present and former parent companies, subsidiaries, related or affiliated companies, and their 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, including Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton Lodge Granite Bay, Inc., Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O’Connor Woods Housing Corporation, Inc., and Defendants’ Counsel.

x. “Service Awards” means the payment to Plaintiffs Khayo Sishi, Sandeep Purewal, Vanessa Barber, and Cherra Redd for their efforts in bringing and prosecuting this matter. The Service Awards will not exceed Ten Thousand Dollars (\$10,000.00) for Plaintiff Khayo Sishi and Five Thousand Dollars (\$5,000.00) each to Plaintiffs Sandeep Purewal, Vanessa Barber, and Cherra Redd.

y. “Settlement Administrator” means Settlement Services, Inc., the third-party class action settlement administrator that will handle the administration of this Settlement, subject to approval by the Court.

z. “Settlement Administrator Costs” refer to the costs the Settlement Administrator will incur to distribute the Settlement Notice and Settlement Awards, which are estimated to be Sixty Thousand Dollars (\$60,000.00).

aa. “Settlement Award” means the payment that each Settlement Class Member and Aggrieved Employee shall be entitled to receive pursuant to the terms of this Agreement.

bb. “Settlement Notice” means the Notice of Class Action Settlement to the Class Members, as approved by the Court.

cc. “Qualified Stipulation to Class Certification” means that the Parties will stipulate to class certification of the Settlement Class for purposes of the Settlement only.

dd. “Workweek” is equal to five (5) shifts worked by Class Members.

RECITALS

3. Plaintiff Khayo Sishi filed a Complaint for Penalties Pursuant to Section 2699(a) and (f) of the California Labor Code Private Attorneys General Act on June 2, 2021 against Defendant Eskaton Properties Incorporated in the Superior Court of California, County of Alameda. *Khayo Sishi v. Eskaton Properties, Inc., et al.*, Superior Court of California, County of Alameda, Case Number RG21100764.

4. On July 28, 2021, Plaintiff Khayo Sishi filed a First Amended Complaint for Penalties Pursuant to Section 2699(a) and (f) of the California Labor Code Private Attorneys General Act against Defendants Eskaton Properties Incorporated and California Healthcare Consultants, Inc.

5. Defendant Eskaton Properties Incorporated filed its answer to the initial complaint on August 6, 2021. Defendants filed their answer to the First Amended Complaint on September 15, 2021.

6. Through the complaint, Plaintiff Khayo Sishi alleges that Defendants violated various California wage and hour laws, including, but not limited to, requiring their employees to work off-the-clock and failing to provide legally compliant meal and rest breaks. On this basis, Plaintiff brought PAGA claims against Defendants for failure to compensate for all hours worked, failure to compensate for all overtime wages, failure to compensate for all minimum wages, failure to authorize and/or permit timely and compliant meal and rest periods and failure to pay premium payments for those non-compliant meal and rest periods, failure to provide accurate itemized wage statements, and failure to timely pay full wages following separation from employment.

7. On February 9, 2022, Plaintiff Khayo Sishi filed his motion for leave to amend the complaint to add class claims on behalf of the Class Members, and the hearing was set for May 13, 2022.

8. On February 15, 2022, the Parties conducted a full day mediation session which was remotely held before well-respected employment mediator Jeffrey Krivis. The Parties were unable to reach a settlement at the mediation, but agreed to continue negotiations.

9. On March 4, 2022, the Parties conducted a second day of mediation which lasted approximately half of a day. The Parties were unable to reach a settlement at the mediation, but the mediator issued a mediator’s proposal. The Parties continued to negotiate a possible settlement.

10. On March 30, 2022, the Parties accepted the mediator’s proposal and agreed to settle this action under the terms provided in the instant Settlement Agreement.

11. The Parties jointly prepared a Term Sheet, which was fully executed on April 8, 2022.

12. Class Counsel has made a thorough and independent investigation of the facts and law relating to the allegations in the Action. In agreeing to this Settlement Agreement, Plaintiffs considered: (a) the facts developed during pre-mediation, informal discovery, and the Parties’ mediation process and the law applicable thereto; (b) additional claims that the Parties contemplating

1 adding to the Settlement, not yet included in the Action, and the damages and penalties attributable
2 thereto; (d) the attendant risks of continued litigation and the uncertainty of the outcome of the claims
3 alleged against Defendants; and (e) the desirability of consummating this Settlement according to the
4 terms of this Settlement Agreement. Plaintiffs concluded that the terms of this Settlement are fair,
5 reasonable and adequate, and that it is in the best interests of the Class Members and Aggrieved
6 Employees to settle the claims against Defendants pursuant to the terms set forth herein.

7
8 13. The Parties recognize that notice to the Settlement Class Members of the material terms
9 of this Settlement, as well as Court approval of this Settlement, are required to effectuate the
10 Settlement, and that the Settlement will not become operative until the Court grants final approval of
11 it, the Settlement becomes Final, and the Settlement Effective Date occurs.

12
13 14. The Parties stipulate that Plaintiff Khayo Sishi shall serve an amended PAGA Notice
14 on the LWDA and Defendants to include all claims pleaded and not yet pleaded to conform with the
15 release (described below).

16
17 15. The Parties stipulate that Plaintiff shall file a joint stipulation in the instant Action for
18 an order granting leave to amend the operative complaint to add Plaintiffs Sandeep Purewal, Vanessa
19 Barber, and Cherra Redd, add class claims on behalf of the Class Members, as well as add all the
20 claims pleaded and not yet pleaded to conform with the release (described below), with the filing of
21 Plaintiffs' Motion for Preliminary Approval of this Settlement.

22
23 16. The Parties stipulate and agree that, for settlement purposes only, the requisites for
24 establishing class certification pursuant to CAL. CIV. CODE PROC. § 382 are met. Should this Settlement
25 not become Final, such stipulation to certification shall become null and void and shall have no bearing
26 on, and shall not be admissible in connection with, the issue of whether or not class certification would
27 be appropriate in a non-settlement context. Defendants deny that class action treatment is appropriate
28 in the litigation context or for trial.

17
18 17. In consideration of the foregoing and other good and valuable consideration, the receipt
19 and sufficiency of which is hereby acknowledged by each party to the other, IT IS HEREBY
20 AGREED, by and between the undersigned, subject to the final approval of the Court and the other
21 conditions set forth herein, that the Aggrieved Employees' PAGA Claims, as well as Plaintiffs' and
22 Class Members' claims as described herein against Defendants shall be settled, compromised and
23 dismissed, on the merits and with prejudice, and that the Plaintiffs' and Class Members' Released
24 Claims shall be finally and fully compromised, settled and dismissed as to the Defendants and
25 Releasees, in the manner and upon the terms and conditions set forth below.

26 **RELEASES**

27
28 18. In exchange for the consideration set forth in this Settlement Agreement, Plaintiffs and
Class Members and Aggrieved Employees agree to release all claims as set forth herein as applicable.

19
20 19. **Class Members' Released Claims.** Upon Final Approval of the Settlement Agreement
21 and payment of amounts set forth herein, and except as to such rights or claims as may be created by
22 this Settlement Agreement, Plaintiffs and all Class Members shall and hereby do release and discharge
23 all Releasees, finally, forever and with prejudice, from the claims between June 2, 2017 and June 11,
24 2022 or Preliminary Approval or any earlier date determined by Defendants as follows:

- 1 a. Class Members: Plaintiffs and Class Members release Defendants and Releasees from
2 any and all claims that are or could have been alleged in the operative complaints
3 against Defendants and Releasees, and the Second Amended Complaint that the Parties
4 stipulate to in the Action, including but not limited to claims under California Labor
5 Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256, 510,
6 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1,
7 1198, 1198.5, 1199, 2800, 2802, and 2810.5, reporting time wages, and violations of
8 California Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), and
9 any amendment(s) thereto based on the factual allegations contained therein.

10 20. Releases of PAGA Claims. Plaintiffs and the Aggrieved Employees fully release the
11 claims and rights to recover civil penalties against Defendants and Releasees on behalf of the LWDA
12 and Aggrieved Employees, to recover civil penalties, costs, expenses, attorneys' fees, or interest
13 against the Releasees on behalf of Aggrieved Employees and LWDA for any Labor Code or Wage
14 Order violation alleged or could have been alleged in any Complaint or PAGA letters, including but
15 not limited to the Second Amended Complaint and amended PAGA letter, in the Action, including
16 violations of the following: California Labor Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226,
17 226.3, 226.7, 246, 248.5, 256, 510, 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194,
18 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2810.5, and reporting time wages. The release
19 period for PAGA claims runs from March 29, 2020 to June 11, 2022 or Preliminary Approval or any
20 earlier date determined by Defendants.

21 21. Plaintiffs' General Release of Claims. Plaintiffs releases any and all claims,
22 obligations, demands, actions, rights, causes of action, and liabilities against the Releasees, of
23 whatever kind and nature, character, and description, whether in law or equity, whether sounding in
24 tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other
25 source of law or contract, whether known or unknown, and whether anticipated or unanticipated,
26 including all unknown claims covered by California Civil Code section 1542 that could be or are
27 asserted based upon any theory or facts whatsoever, arising at any time up to and including the date
28 of the execution of this Settlement Agreement, for any type of relief, including, without limitation,
claims for minimum, straight time, or overtime wages, premium pay, business expenses, other
damages, penalties (including, but not limited to, waiting time penalties), liquidated damages, punitive
damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and
declaratory relief. Plaintiffs' released claims include, but are not limited to, the Class Members'
Released Claims, as well as any other claims under any provision of federal, state, or local law,
including the FLSA, the California Labor Code, and California Wage Orders. Upon Final Approval,
Plaintiffs shall be deemed to have fully, finally, and forever released Releasees from all Plaintiffs'
released claims through the date of Preliminary Approval. Furthermore, upon Final Approval,
Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted
by law, the provisions, rights, and benefits they may otherwise have had relating to the Plaintiffs'
Released Claims pursuant to Section 1542 of the California Civil Code, 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.

CERTIFICATION, NOTICE, AND SETTLEMENT IMPLEMENTATION

22. The Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the Settlement Class, and notifying the Settlement Class Members of this Settlement:

- a. **Amended PAGA Letter.** The Parties shall jointly stipulate to service of an amended PAGA Letter that conforms to the terms of this Settlement Agreement.
- b. **Second Amended Complaint.** The Parties shall jointly stipulate to the filing of the Second Amended Complaint and to personal and subject matter jurisdiction in Alameda County Superior Court. Plaintiffs shall file the stipulation and proposed Second Amended Complaint with the filing of the Unopposed Motion for Preliminary Approval of Settlement Agreement discussed in Paragraph 21.b.
- c. **Request for Class Certification and Preliminary Approval Order.** Plaintiffs shall file an Unopposed Motion for Preliminary Approval of Settlement Agreement, requesting that the Court certify the Settlement Class pursuant to CAL. CIV. CODE PROC. § 382 for the sole purpose of settlement; preliminarily approve the Settlement Agreement and its terms; approve the proposed form of the Settlement Notice and find that the proposed method of disseminating the Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances; set a date for Plaintiffs' motion for Final Approval of the Settlement, and approval of the requested Service Awards, Fee Award, Class Counsel's Costs, and Settlement Administrator's Costs; and set a date for the Final Approval Hearing.
- d. **Notice.** The Settlement Administrator shall be responsible for preparing, printing, mailing, and emailing the Settlement Notice to all Class Members. The Settlement Administrator will also create a website for the Settlement, which will allow Class Members to view the Settlement Notice (in generic form), this Settlement Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of the Settlement Agreement. Additionally, the Settlement website will provide contact information for Class Counsel and the Settlement Administrator. The Settlement Administrator will provide Class Counsel and Defendants' counsel with a preview of the proposed website. Class Counsel and Defendants' counsel must approve the website before it goes live and also must approve any modifications to the website. The Settlement Administrator shall also create a toll-free telephone number to field telephone inquiries from Class Members during the notice and settlement administration periods. The Settlement Administrator will be directed to take the website and call center down after the 180-day check cashing period for Settlement Award checks.
- e. Within twenty (20) business days after the Court's Preliminary Approval of the Settlement, Defendants shall provide to the Settlement Administrator the Class List: an electronic database containing the names, last known addresses, last known telephone numbers (if any), last known personal email address (if available), social security numbers or tax ID numbers of each Class Member, along with the total number of workweeks that each Class Member worked in

1 the state of California between June 2, 2017 and June 11, 2022 or Preliminary
2 Approval or any earlier date determined by Defendants. The Class List will
3 also include an indication of whether the Class Member is an Aggrieved
4 Employee and the Defendant and/or Released Parties for whom each Class
5 Member worked and who will be paying that Class Member's share of
6 Employment Taxes.

7
8 f. Within twenty (20) business days after the Court's Preliminary Approval of the
9 Settlement, Defendants shall also provide to Class Counsel a redacted Class
10 List: an electronic database containing the names, last known addresses, last
11 known telephone numbers (if any), last known personal email address (if
12 available), along with the total number of workweeks that each Class Member
13 worked in the state of California between June 2, 2017 and June 11, 2022 or
14 Preliminary Approval or any earlier date determined by Defendants. The Class
15 List will also include an indication of whether the Class Member is an
16 Aggrieved Employee and the Defendant and/or Released Parties for whom each
17 Class Member worked and who will be paying that Class Member's share of
18 Employment Taxes. Class Counsel agrees to only utilize the Class List for
19 purposes of effectuating the Settlement, including as a reference from which to
20 answer incoming calls from Settlement Class Members. Class Counsel agrees
21 not to use the Class List, or any information therein, to solicit Settlement Class
22 Members or file additional lawsuits against Defendants or Released Parties.
23 Class Counsel agrees to immediately destroy the Class List (including all
24 copies, iterations, portions, modified files, in whole or in part) within five (5)
25 business days following the filing the administrator's declaration regarding
26 final accounting or completion of the settlement administration, whichever is
27 earlier.

28 g. In order to provide the best notice practicable, prior to mailing the Settlement
Notice, the Settlement Administrator will take reasonable efforts to identify
current addresses via public and proprietary systems.

h. Within ten (10) business days after receiving the Class List, the Settlement
Administrator shall mail and email (if email addresses are available) the agreed-
upon and Court-approved Settlement Notice to Class Members. The Settlement
Administrator shall provide notice to Class Counsel and Defendants' Counsel
that the Settlement Notice has been mailed.

i. Any Settlement Notice returned to the Settlement Administrator with a
forwarding address shall be re-mailed within three (3) business days following
receipt of the returned mail. If no forwarding address is provided, the Settlement
Administrator shall promptly attempt to determine a correct address using a
skip-trace, or other search using the name, address and/or Social Security
number of the Class Member involved, and shall re-mail the Notice of
Settlement. In no circumstance shall such re-mailing extend the Notice
Deadline.

j. Within ten (10) business days after the Notice Deadline, the Settlement
Administrator shall provide Defendants' Counsel and Class Counsel,
respectively, a report showing: (i) the names of Class Members; (ii) the

Settlement Awards owed to each Class Member; (iii) the final number of Class Members who have submitted objections or valid letters requesting exclusion from the Settlement; and (iv) the number of undeliverable Settlement Notices. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of such completion to counsel for all Parties and the Court. This written certification shall include the total number of Settlement Class Members (including the total number of Class Members who requested exclusion), the average recovery per Settlement Class Member, median recovery per Settlement Class Member, the largest and smallest amounts paid to Settlement Class Members, and the number and value of checks not cashed.

- k. Within ten (10) business days after the conclusion of the 180-day check cashing period below, the Settlement Administrator shall provide Defendants' Counsel and Class Counsel, respectively, a report regarding the total amount of any funds that remain from checks that are returned as undeliverable or are not negotiated.

23. **Disputes Regarding Workweeks.** To the extent that any Settlement Class Member disputes the number of workweeks that the Settlement Class Member worked, as shown in his or her Settlement Notice, such Settlement Class Members may produce evidence to the Settlement Administrator establishing the dates they contend to have worked for Defendants. The deadline for Settlement Class Members to submit disputes pursuant to this paragraph is the Notice Deadline (disputes must be postmarked by the Notice Deadline). Unless the Settlement Class Member presents convincing evidence proving he or she worked more workweeks than shown by Defendants' records, his/her Settlement Award will be determined based on Defendants' records. The Settlement Administrator shall notify counsel for the Parties of any disputes it receives. Defendants shall review its records and provide further information to the Settlement Administrator, as necessary. The Settlement Administrator shall provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, it shall be presented to the Court for a resolution. The Settlement Administrator will notify the disputing Settlement Class Member of the decision.

24. **Objections.** The Settlement Notice shall provide that Class Members who wish to object to the Settlement must, on or before the Notice Deadline, submit to the Settlement Administrator a written statement objecting to the Settlement. Such objection shall not be valid unless it includes the information specified in the Settlement Notice. The statement must be signed personally by the objector, and must include the objector's name, address, telephone number, email address (if applicable), the factual and legal grounds for the objection, and whether the objector intends to appear at the Final Approval Hearing. The Settlement Notice shall advise Class Members that objections shall only be considered if the Class Member has not requested exclusion from the Settlement. No Settlement Class Member shall be entitled to be heard at the Final Approval Hearing (whether individually or through counsel), unless written notice of the Settlement Class Member's intention to appear at the Final Approval Hearing has been filed with the Court and served upon Class Counsel and Defendants' Counsel on or before the Notice Deadline and the Settlement Class Member has not requested exclusion from the Settlement. The postmark date of mailing to Class Counsel and Defendants' Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. If postmark dates differ, the later of the two postmark dates will control. Absent good cause found by the court, Class Members who fail to make timely written objections in the manner specified

above shall be deemed to have waived any objections and oppositions to the Settlement's fairness, reasonableness and adequacy, and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. However, the requirement that the Class Member submit a written objection may be excused by the Court upon a showing of good cause. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal from any order of the Court that is consistent with the terms of this Settlement.

25. **Requests for Exclusion.** The Settlement Notice shall provide that Class Members, other than Plaintiffs, who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written request for exclusion must contain the Class Member's full name, address, telephone number, email address (if applicable), and last four digits of their social security number, and must be signed individually by the Class Member. No request for exclusion may be made on behalf of a group of individuals. Such written statement must be postmarked by the Notice Deadline or will be deemed untimely and invalid. Any request for exclusion that does not contain all information required in this paragraph will be deemed invalid. None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to exclude themselves from the settlement.

26. **Final Approval Hearing.** Class Counsel will be responsible for drafting the Unopposed Motion for Final Approval of Settlement Agreement, and approval of the requested Service Awards, Fee Award, Class Counsel's Costs, and Settlement Administrator's Costs to be heard at the Final Approval Hearing. Plaintiffs shall request that the Court schedule the Final Approval Hearing no earlier than thirty (30) days after the Notice Deadline to determine final approval of the settlement and to enter a Final Approval Order:

- a. certifying this Action and the Settlement Class as a class action CAL. CIV. CODE PROC. § 382 for purposes of settlement only;
- b. finding dissemination of the Settlement Notice was accomplished as directed and met the requirements of due process;
- c. approving the Settlement as final and its terms as a fair, reasonable and adequate;
- d. approving the payment of the Service Awards to Plaintiffs Khayo Sishi, Sandeep Purewal, Vanessa Barber, and Cherra Redd;
- e. approving Class Counsel's application for an award of attorneys' fees and reimbursement of out-of-pocket litigation costs and expenses;
- f. directing that the Settlement funds be distributed in accordance with the terms of this Settlement Agreement;
- g. directing that the Action be dismissed finally, fully, forever and with prejudice and in full and final discharge of any and all Class Members' Released Claims; and
- h. retaining continuing jurisdiction over this Action for purposes only of

overseeing all settlement administration matters.

27. **Dismissal of Related Actions.** Within ten (10) business days of executing this Settlement Agreement, Plaintiffs Sandeep Purewal, Vanessa Barber, and Cherra Redd stipulate to stay their pending litigation (Sacramento Superior Court Case Nos.: 34-2021-00306621 and 34-2021-00312015), in their entirety, against Defendants, until ten (10) business days following the Effective Date. The Parties will cooperate to continue court appearance and trial-related dates. Within ten (10) business days of the Effective Date, Plaintiffs Sandeep Purewal, Vanessa Barber, and Cherra Redd shall file requests for dismissal of their actions, in their entirety, with prejudice, against Defendants and Released Parties.

28. **Post Judgment Report.** At the conclusion of the 180-day check cashing period set forth below and following receipt of the Settlement Administrator's report showing the total funds that were actually paid to Settlement Class Members. Plaintiffs' Counsel shall submit a post-judgment report to the Court regarding any funds that remain from checks that are returned as undeliverable or are not negotiated.

SETTLEMENT FUNDS AND AWARD CALCULATION

29. **Gross Settlement Amount.**

- a. **Funding of Settlement.** Within twenty (20) business days of the Effective Date, Defendants shall transfer the Gross Settlement Amount to the Qualified Settlement Fund(s). Only the Settlement Administrator shall have access to the Qualified Settlement Fund(s). Defendants and Released Parties shall not have access to the Gross Settlement Amount, or to any earned interest, once those funds are deposited into the Qualified Settlement Fund(s). The Gross Settlement Amount is fully non-reversionary. All disbursements shall be made from the Qualified Settlement Fund(s).

30. **Payments.** Subject to the Court's Final Approval Order, the following amounts shall be paid by the Settlement Administrator from the Gross Settlement Amount:

- a. **Service Awards to Plaintiffs.** Subject to the Court's approval, Plaintiff Khayo Sishi shall receive up to Ten Thousand Dollars (\$10,000.00) and Plaintiffs Sandeep Purewal, Vanessa Barber, and Cherr Redd shall receive up to Five Thousand Dollars (\$5,000.00) each for their efforts in bringing and prosecuting this matter. The Qualified Settlement Fund(s) shall issue an IRS Form 1099 for these payments. These payments shall be made within five (5) days after the Settlement Administrator receives the Gross Settlement Amount, or as soon as reasonably practicable. If the Court approves Service Awards in amounts less than what Plaintiffs requests, the reduction in the Service Awards shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Awards in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming effective. Any amount not approved

by the Court shall be included as part of the Net Settlement Amount for distribution to Class Members.

b. **Fee Awards and Costs.**

(i) Subject to the Court's approval, Class Counsel shall receive a Fee Award in an amount up to one-third (1/3) of the Gross Settlement Amount, which will compensate Class Counsel for all work performed in the Action as of the date of this Settlement Agreement as well as all of the work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Action. In addition, Class Counsel shall, subject to Court approval, receive reimbursement of Class Counsels' Costs, to be approved by the Court. These payments of attorneys' fees and costs shall be made within fifteen (15) days after the Settlement Administrator receives the Gross Settlement Amount, or as soon as reasonably practicable. Any amount not approved by the Court shall be included as part of the Net Settlement Amount for distribution to Class Members.

(ii) An IRS Form 1099 shall be provided by the Settlement Administrator to Class Counsel for the payments made to Class Counsel. Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to them.

c. **Labor and Workforce Development Agency Payment.** Subject to Court approval, the Parties agree that the amount of Fifty-Five Thousand Dollars (\$55,000.00) from the Gross Settlement Amount will be paid in settlement of all claims brought in the Action by or on behalf of the Aggrieved Employee under the PAGA. Pursuant to PAGA, Seventy-Five Percent (75%) of this amount, or Forty-One Thousand and Two Hundred and Fifty Dollars (\$41,250.00) will be paid to the LWDA and Twenty-Five Percent (25%), or Thirteen Thousand Seven Hundred and Fifty Dollars (\$13,750.00) will be allocated to the Net PAGA Amount. The payment to the LWDA should be made within fifteen (15) days after the Settlement Administrator receives the Gross Settlement Amount.

d. **Settlement Administration Costs.** Settlement Administration costs are estimated at \$60,000 and shall be paid from the Gross Settlement Amount. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs incurred in the administration of the Settlement.

e. **Settlement Awards to Eligible Class Members.** Settlement Awards shall be made to Settlement Class Members as set forth below.

CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS

31. **Settlement Award Eligibility.** All Settlement Class Members shall be paid a Settlement Award from the Net Settlement Amount.

32. Any Class Member who fails to submit a timely request to exclude themselves from the Settlement by following the procedure set forth in the Settlement Notice shall automatically be deemed a Settlement Class Member whose rights and claims with respect to the issues raised in the Action are determined by any order the Court enters granting final approval, and any judgment the Court ultimately enters in the Action. Any such Settlement Class Member's rights to pursue any Released Claims (as defined in this Settlement Agreement) will be extinguished.

33. **Settlement Award Calculations.** The Settlement Administrator shall be responsible for determining the amount of the Settlement Award to be paid to each Settlement Class Member based on the below formulas. When calculating the individual Settlement Awards to Settlement Class Members following Final Approval (for purposes of preparing individual settlement payment checks), the Settlement Administrator will not include Class Members who validly request exclusion from the Settlement.

a. Settlement Class Members shall receive a *pro rata* portion of the Net Settlement Amount as follows:

i. For each workweek, or fraction thereof, during which the Settlement Class Member worked for either Defendants at any time between June 2, 2017 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Class Member worked. Each workweek will be equal to one (1) settlement share.

ii. The total number of settlement shares for all Settlement Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Settlement Class Members' number of settlement shares to determine the Settlement Class Members' *pro rata* portion of the Net Settlement Amount.

b. Settlement Class Members who are also Aggrieved Employees under the PAGA shall also receive a *pro rata* share of the Net PAGA Amount as follows:

i. For any Aggrieved Employee who worked for Defendants throughout California any time between March 29, 2020 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants, he or she shall be eligible to receive an *pro rata* portion of the Net PAGA Amount based on the number of pay periods worked between March 29, 2020 and June 11, 2022 or Preliminary Approval or any earlier date determined by Defendants. The total number of settlement shares for all Aggrieved Employees will be added together and the resulting amount will be divided into the Net PAGA Amount to reach a per share dollar figure. That figure will then be multiplied by each Aggrieved

Employee's number of settlement shares to determine the Aggrieved Employees' *pro rata* portion of the Net PAGA Amount.

34. In addition to other information contained on the Settlement Notice, the Settlement Notice shall state the estimated minimum payment the Class Member is expected to receive assuming full participation of all Class Members.

35. All Settlement Award determinations shall be based on Defendants' timekeeping, payroll, and/or other records. If the Parties determine, based upon further review of available data, that a person previously identified as being a Settlement Class Member is not a Settlement Class Member, or an individual who was not previously identified as a Settlement Class Member is in fact a Settlement Class Member but was not so included, the Settlement Administrator shall promptly make such addition or deletion as appropriate.

36. **Settlement Award Allocations.** Any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, one-fourth (1/4) shall be allocated to wages and three-fourths (3/4) shall be allocated to penalties and interest. Settlement Awards will be paid out to Settlement Class Members subject to reduction for all employee's share of withholdings and taxes associated with the wage-portion of the Settlement Awards, for which Settlement Class Members shall be issued an IRS Form W-2. Settlement Class Members will also be issued an IRS Form 1099 for the portions of the Settlement Awards that are allocated to penalties and interest. Defendants shall pay the employer's share of all required FICA and FUTA taxes on the wage portions of the Settlement Awards. The Settlement Administrator shall calculate the employer share of taxes for each respective employee based on the corresponding tax rates provided by Defendants and/or the Released Parties and provide Defendants and/or Released Parties and provide Defendants and/or Released Parties with the total employer tax contributions within five (5) business days after the final Settlement Award calculations are approved. Defendants and/or Released Parties shall deposit the calculated employer tax into the Qualified Settlement Fund(s) within twenty (20) business days after the Effective Date. Amounts withheld will be remitted by the Settlement Administrator from the Qualified Settlement Fund(s) for the respective Defendants and/or Released Parties to the appropriate governmental authorities. Defendants and/or Released Parties shall cooperate with the Settlement Administrator to provide payroll tax information as necessary to accomplish the income and employment tax withholding on the wage portion of each Settlement Award, and the Form 1099 reporting for the non-wage portion of each Settlement Award. The Settlement Administrator shall create and establish sufficient Qualified Settlement Funds to properly calculate, distribute and report Settlement Awards and payroll taxes for all respective Defendants and/or Released Parties.

37. Class Counsel and Defendants' Counsel do not intend this Settlement Agreement to constitute legal advice relating to the tax liability of any Settlement Class Member. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

38. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with a final report of all Settlement Awards, at least ten (10) business days before the Settlement Awards to Settlement Class Members are mailed.

39. The Settlement Administrator shall mail all Settlement Awards to Settlement Class Members within ten (10) days after the Settlement Administrator receives the Gross Settlement

Amount, or as soon as reasonably practicable. The Settlement Administrator shall then provide written certification of mailing to Class Counsel and Defendants' Counsel.

40. All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and may thereafter automatically be canceled if not cashed within that time, at which time the right to recover any Settlement Award will be deemed void and of no further force and effect. With ninety (90) days remaining, a reminder letter will be sent via U.S. mail and email to those who have not yet cashed their settlement check, and during the last sixty (60) days of the check cashing period, a call will be placed to those that have still not cashed their check to remind them to do so. At the conclusion of the 180-day check cashing deadline, Settlement Class Members who have not cashed their Settlement Award checks shall nevertheless be deemed to have finally and forever released the Plaintiffs' General Release of Claims or Class Members' Released Claims, as applicable.

41. **Remaining Monies.** If at the conclusion of the 180-day check cashing period set forth above, any funds remaining from checks that are returned as undeliverable or are not negotiated, those monies shall be distributed as follows, subject to the Court's approval:

- a. If the total residual amount is less than \$75,000, then the amount will revert to *cy pres*. The *cy pres* recipient shall be proposed by the parties and approved by the Court. The Parties propose Legal Aid at Work which provides legal services assisting low-income, working families and promotes better understanding of the conditions, policies, and institutions that affect the well-being of workers and their families and communities. The Settlement Administrator shall distribute any *cy pres* payment.
- b. If the total residual amount is \$75,000 or greater, a second distribution will occur to those Settlement Class Members who cashed their Settlement Award check. The second distribution will occur on a *pro rata* basis as provided for in Paragraph 32. In the event of a redistribution of uncashed check funds to Settlement Class Members who cashed their Settlement Award, the additional settlement administration costs related to the redistribution will be deducted from the total amount of uncashed checks prior to the redistribution. If a check to a Settlement Class Member is returned to the Settlement Administrator as undeliverable during the second distribution, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If none is found, then said check shall revert to the *cy pres* recipient. If there are uncashed check funds remaining from redistribution as described in this Paragraph, then the amount will revert to *cy pres*.
- c. Within twenty-one (21) days after the distribution of any remaining monies to Settlement Class Members who cashed their Settlement Award check or to the *cy pres* recipient, Plaintiffs will file a Post-Distribution Accounting. The Post-Distribution Accounting will set forth the total settlement fund, the total number of Settlement Class Members, the total number of Settlement Class Members to whom notice was sent and not returned as undeliverable, the number and percentage of opt-outs, the number and percentage of objections, the average and median recovery per Settlement Class Members, the largest and smallest amounts paid to Settlement Class Members, the method(s) of notice and the

method(s) of payment to Settlement Class Members, the number and value of checks not cashed, the amounts distributed to the *cy pres* recipient (if applicable), the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage of the settlement fund, and the multiplier, if any.

MISCELLANEOUS

42. **No Adverse Action.** Defendants will not take any adverse action against any current or former employee on the grounds that he/she is eligible to participate and/or does participate in the Settlement. Defendants will not discourage participation in this Settlement Agreement or encourage objections or requests for exclusion opt-outs.

43. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against Defendants, Class Counsel, or Defendants' Counsel based on distributions or payments made in accordance with this Settlement Agreement.

44. **Submissions to the LWDA.** At the same time as they submit this Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days following the Effective Date, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3).

45. **No Admission of Liability.** Defendants expressly deny all of the allegations in the Actions. Defendants expressly deny that they have violated the California Labor Code, or any other provision of federal or state law with respect to any of their employees. This Settlement Agreement and all related documents are not and shall not be construed as an admission by Defendants or any of the Releasees of any fault or liability or wrongdoing. If this Settlement Agreement does not become final, this Settlement Agreement, or the circumstances leading to this Settlement Agreement, may not be used as an admission by Defendants or any wrongdoing or evidence of any wrongdoing by Defendants.

46. **Defendants' Legal Fees.** Defendants' legal fees and expenses in this Action shall be borne by Defendants.

47. **Nullification of the Settlement Agreement.** In the event: (a) the Court does not preliminarily or finally approve the Settlement as provided herein; or (b) the Settlement does not become Final for any other reason; or (c) the Effective Date does not occur, the Parties agree to engage in follow up negotiations with the intent of resolving the Court's concerns that precluded approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the Settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, then either Party may void this Agreement; at that point, the Parties agree that each shall return to their respective positions on the day before this Agreement and that this Agreement shall not be used in evidence or argument in any other aspect of their litigation.

48. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Action, or enforcing its terms (including that claims were settled and released), resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Agreement, nor its terms, nor any document, statement, proceeding or conduct related to

1 this Agreement, nor any reports or accounts thereof, shall be construed as, offered or admitted in
2 evidence as, received as, or deemed to be evidence for any purpose adverse to the Parties, including,
3 without limitation, evidence of a presumption, concession, indication or admission by any of the
4 Parties of any liability, fault, wrongdoing, omission, concession or damage.

5 49. **Computation of Time.** For purposes of this Agreement, if the prescribed time period
6 in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday
7 (as defined by CAL. CIV. CODE PROC. §§ 12, 12a), such time period shall be continued to the following
8 business day. The term “days” shall mean calendar days unless otherwise noted.

9 50. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in
10 the Action, except such proceedings necessary to implement and complete the Settlement. Further,
11 without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of
12 time to carry out any of the provisions of the Settlement.

13 51. **Amendment or Modification.** This Agreement may be amended or modified only by
14 a written instrument signed by counsel for all Parties or their successors in interest. This Agreement
15 may not be discharged except by performance in accordance with its terms or by a writing signed by
16 the Parties hereto.

17 52. **Entire Settlement Agreement.** This Agreement constitutes the entire Agreement
18 among the Parties, and no oral or written representations, warranties or inducements have been made
19 to any Party concerning this Agreement other than the representations, warranties, and covenants
20 contained and memorialized in such documents. All prior or contemporaneous negotiations,
21 memoranda, agreements, understandings, and representations, whether written or oral, are expressly
22 superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they
23 have not relied on any promise, representation or warranty, express or implied, not contained in this
24 Agreement. No rights hereunder may be waived except in writing.

25 53. **Authorization to Enter into Settlement Agreement.** The Parties warrant and
26 represent that they are authorized to enter into this Agreement and to take all appropriate action
27 required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms,
28 and to execute any other documents required to effectuate the terms of this Agreement. The Parties
and their counsel shall cooperate with each other and use their best efforts to effect the implementation
of the Agreement. In the event that the Parties are unable to reach resolution on the form or content of
any document needed to implement this Agreement, or on any supplemental provisions or actions that
may become necessary to effectuate the terms of this Agreement, the Parties shall seek the assistance
of the mediator, Jeffrey Krivis, to resolve such disagreement.

54. **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure
to the benefit of Plaintiffs, Defendants, the Settlement Class Members, the Aggrieved Employees and
their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any
corporation or any entity with which any party may merge, consolidate or reorganize. The Parties
hereto represent, covenant and warrant that they have 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 except as set
forth herein.

55. **Counterparts.** This Agreement may be executed in one or more counterparts,
including by facsimile or email. All executed counterparts and each of them shall be deemed to be one

and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

56. **No Signature Required by Class Members.** Only the Plaintiffs will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

57. **Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

58. **Governing Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the laws of the State of California.

59. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for this purpose.

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

PLAINTIFF:  Date: 10/06/, 2022
Khayo Sishi

PLAINTIFF: _____ Date: _____, 2022
Sandeep Purewal

PLAINTIFF: _____ Date: _____, 2022
Vanessa Barber

PLAINTIFF: _____ Date: _____, 2022
Cherr Redd

and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

56. **No Signature Required by Class Members.** Only the Plaintiffs will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

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IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

PLAINTIFF: _____ Date: _____, 2022
Khayo Sishi

PLAINTIFF:  _____ Date: 10/13/22, 2022
Sandeep Purewal

PLAINTIFF: _____ Date: _____, 2022
Vanessa Barber

PLAINTIFF: _____ Date: _____, 2022
Cherr Redd

and the same instrument. All executed copies of this Agreement, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

56. **No Signature Required by Class Members.** Only the Plaintiffs will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

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IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

PLAINTIFF: _____ Date: _____, 2022
Khayo Sishi

PLAINTIFF: _____ Date: _____, 2022
Sandeep Purewal

PLAINTIFF: Vanessa Barber Date: 11 / 22 / 2022, 2022
Vanessa Barber

PLAINTIFF: _____ Date: _____, 2022
Cherra Redd

1 and the same instrument. All executed copies of this Agreement, and photocopies thereof (including
2 facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall
be as legally binding and enforceable as the original.

3 56. **No Signature Required by Class Members.** Only the Plaintiffs will be required to
4 execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the
5 binding nature of the release, and such shall have the same force and effect as if this Settlement
Agreement were executed by each Settlement Class Member.

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7 preparation of this Agreement; hence the drafting of this Agreement shall not be construed against any
8 of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at
9 arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily
based upon adequate information and sufficient discovery and after consultation with experienced
legal counsel.

10 58. **Governing Law.** All terms of this Settlement Agreement shall be governed by and
interpreted according to the laws of the State of California.

11 59. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the
12 interpretation, implementation, and enforcement of the terms of this Settlement and all orders and
13 judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction
of the Court for this purpose.

14 **IN WITNESS WHEREOF**, the Parties and their Counsel have executed this Settlement
15 Agreement as follows:

16
17 **PLAINTIFF:** _____ Date: _____, 2022
18 Khayo Sishi

19
20
21 **PLAINTIFF:** _____ Date: _____, 2022
22 Sandeep Purewal

23
24 **PLAINTIFF:** _____ Date: _____, 2022
25 Vanessa Barber

26
27 **PLAINTIFF:**  _____ Date: 10-6, 2022
28 Cherra Redd

1
2 **APPROVED AS TO FORM BY CLASS COUNSEL:**

3 

Date: August 23, 2022

4 Carolyn Hunt Cottrell
5 Ori Edelstein
6 Michelle S. Lim
7 Kristabel Sandoval
8 SCHNEIDER WALLACE
9 COTTRELL KONECKY LLP
10 2000 Powell Street, Suite 1400
11 Emeryville, California 94608

12 **DEFENDANT:**

Date: _____, 2022

13 On behalf of Eskaton Properties Incorporated

14
15 **DEFENDANT:**

Date: _____, 2022

16 On behalf of California Healthcare Consultants, Inc.

17
18
19 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

20
21
22 Date: _____, 2022

23 Mollie M. Burks
24 Linh T. Hua
25 Christie E. Yang
26 GORDON REESE SCULLY MANSUKHANI, LLP
27 633 West Fifth Street, 52nd floor
28 Los Angeles, CA 90071

1
2 **APPROVED AS TO FORM BY CLASS COUNSEL:**

3
4 _____
5 Carolyn Hunt Cottrell
6 Ori Edelstein
7 Michelle S. Lim
8 Kristabel Sandoval
9 SCHNEIDER WALLACE
10 COTTRELL KONECKY LLP
11 2000 Powell Street, Suite 1400
12 Emeryville, California 94608

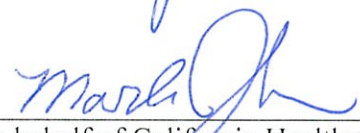
Date: _____, 2022

13 **DEFENDANT:**

14 
15 _____
16 On behalf of Eskaton Properties Incorporated

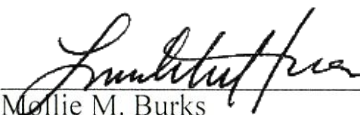
17 Date: 8/29/, 2022

18 **DEFENDANT:**

19 
20 _____
21 On behalf of California Healthcare Consultants, Inc.

22 Date: 8/29/, 2022

23 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

24 
25 _____
26 Mollie M. Burks
27 Linh T. Hua
28 Christie E. Yang
GORDON REESE SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

Date: 08/30, 2022

EXHIBIT 2

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Ori Edelstein (SBN 268145)
Michelle S. Lim (SBN 315691)
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of California and Aggrieved Employees*

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Attorneys for Defendants
ESKATON PROPERTIES INCORPORATED and
CALIFORNIA HEALTHCARE CONSULTANTS, INC.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA**

KHAYO SISHI, on behalf of the State of
California;

Plaintiff,

v.

ESKATON PROPERTIES INCORPORATED,
CALIFORNIA HEALTHCARE
CONSULTANTS, INC., and DOES 1-100,
inclusive;

Defendants.

Case No.: RG21100764

**ADDENDUM A TO CLASS ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

1 **ADDENDUM A TO CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 1. This Addendum A to Class Action Settlement Agreement and Release (the
3 “Settlement”) is entered into between Plaintiffs Khayo Sishi, Sandeep Purewal, Vanessa Barber, and
4 Cherra Redd (“Plaintiffs”), individually and on behalf of all other similarly-situated persons, the State
5 of California, and the Aggrieved Employees, and Defendants Eskaton Properties Incorporated and
 California Healthcare Consultants, Inc. (“Defendants”), subject to the approval of the Court. Plaintiffs
 and Defendants are collectively referred to as the “Parties.”

6 2. By way of this Addendum A, the Parties seek to exclude Vanessa Barber as a Class
7 Representative. The Parties agree that while Ms. Barber will remain a named Plaintiff in the pleadings,
8 for purposes of the Settlement, she will not be a representative of the Class, will not be entitled to any
9 Service Award (Settlement §§ 2.x, 26.d, 30.a) under the Settlement, and will not be bound by a general
10 release (Settlement § 21) under the Settlement. To the extent Plaintiff Barber is included as a
 Settlement Class Member and/or Aggrieved Employee, she will still be bound by the other release
 language described in the Settlement §§ 19-20.

11 3. Through this Addendum A, the Parties hereby replace Paragraph 2.x of the Settlement
12 with the following language:

13 “Service Awards” means the payment to Plaintiffs Khayo Sishi, Sandeep Purewal, and
14 Cherra Redd for their efforts in bringing and prosecuting this matter. The Service Awards
15 will not exceed Ten Thousand Dollars (\$10,000.00) for Plaintiff Khayo Sishi and Five
 Thousand Dollars (\$5,000.00) each to Plaintiffs Sandeep Purewal and Cherra Redd.

16 4. Through this Addendum A, the Parties hereby replace Paragraph 21 of the Settlement
 with the following language:

17 **Plaintiff Sishi’s, Purewal’s, and Redd’s General Release of Claims.** Plaintiffs Khayo Sishi,
18 Sandeep Purewal, and Cherra Redd release any and all claims, obligations, demands, actions,
19 rights, causes of action, and liabilities against the Releasees, of whatever kind and nature,
20 character, and description, whether in law or equity, whether sounding in tort, contract, federal,
21 state and/or local law, statute, ordinance, regulation, common law, or other source of law or
22 contract, whether known or unknown, and whether anticipated or unanticipated, including all
23 unknown claims covered by California Civil Code section 1542 that could be or are asserted
24 based upon any theory or facts whatsoever, arising at any time up to and including the date of
25 the execution of this Settlement Agreement, for any type of relief, including, without
26 limitation, claims for minimum, straight time, or overtime wages, premium pay, business
27 expenses, other damages, penalties (including, but not limited to, waiting time penalties),
28 liquidated damages, punitive damages, interest, attorneys’ fees, litigation and other costs,
 expenses, restitution, and equitable and declaratory relief. Plaintiffs Khayo Sishi’s, Sandeep
 Purewal’s, and Cherra Redd’s released claims include, but are not limited to, the Class
 Members’ Released Claims, as well as any other claims under any provision of federal, state,
 or local law, including the FLSA, the California Labor Code, and California Wage Orders.
 Upon Final Approval, Plaintiffs Khayo Sishi, Sandeep Purewal, and Cherra Redd shall be
 deemed to have fully, finally, and forever released Releasees from all Plaintiffs Khayo Sishi’s,
 Sandeep Purewal’s, and Cherra Redd’s released claims through the date of Preliminary
 Approval. Furthermore, upon Final Approval, Plaintiffs Khayo Sishi, Sandeep Purewal, and

Cherra Redd shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the Plaintiffs Khayo Sishi's, Sandeep Purewal's, and Cherra Redd's Released Claims pursuant to Section 1542 of the California Civil Code, 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

5. Through this Addendum A, the Parties hereby replace Paragraph 26.d of the Settlement with the following language:

approving the payment of the Service Awards to Plaintiffs Khayo Sishi, Sandeep Purewal, and Cherra Redd.

6. Through this Addendum A, the Parties hereby replace Paragraph 30.a of the Settlement with the following language:

Service Awards to Plaintiffs. Subject to the Court's approval, Plaintiff Khayo Sishi shall receive up to Ten Thousand Dollars (\$10,000.00) and Plaintiffs Sandeep Purewal and Cherra Redd shall receive up to Five Thousand Dollars (\$5,000.00) each for their efforts in bringing and prosecuting this matter. The Qualified Settlement Fund(s) shall issue an IRS Form 1099 for these payments. These payments shall be made within five (5) days after the Settlement Administrator receives the Gross Settlement Amount, or as soon as reasonably practicable. If the Court approves Service Awards in amounts less than what Plaintiffs request, the reduction in the Service Awards shall not be a basis for nullification of this Settlement. Nor shall a reduction in the Service Awards in any way delay or preclude the judgment from becoming a final judgment or the Settlement from becoming effective. Any amount not approved by the Court shall be included as part of the Net Settlement Amount for distribution to Class Members.

7. This Addendum A may be executed in one or more counterparts, including by facsimile or email. All executed counterparts and each of them shall be deemed to be one and the same instrument. All executed copies of this Addendum A, and photocopies thereof (including facsimile and/or emailed copies of the signature pages), shall have the same force and effect and shall be as legally binding and enforceable as the original.

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Addendum A to the Settlement Agreement as follows:

PLAINTIFF:


Khayo Sishi

Date: 11/06/, 2022

1 **PLAINTIFF:**

Renewal
Sandeep Purewal

Date: 11/5/22, 2022

2
3 **PLAINTIFF:**

4 _____
Vanessa Barber

Date: _____, 2022

5
6 **PLAINTIFF:**

7 _____
Cherra Redd

Date: _____, 2022

8
9 **APPROVED AS TO FORM BY CLASS COUNSEL:**

10 _____ Date: _____, 2022

11 Carolyn Hunt Cottrell
12 Ori Edelstein
13 Michelle S. Lim
14 Kristabel Sandoval
15 SCHNEIDER WALLACE
16 COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608

17 **DEFENDANT:**

18 _____
On behalf of Eskaton Properties Incorporated

Date: _____, 2022

19
20 **DEFENDANT:**

21 _____
On behalf of California Healthcare Consultants, Inc.

Date: _____, 2022

22
23 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

24 _____ Date: _____, 2022

25 Mollie M. Burks
26 Linh T. Hua
27 Christie E. Yang
28 GORDON REESE SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

1 **PLAINTIFF:**

Sandeep Purewal

Date: _____, 2022

2
3 **PLAINTIFF:**

Vanessa Barber

Vanessa Barber

Date: 11 / 22 / 2022, 2022

4
5
6 **PLAINTIFF:**

Cherra Redd

Date: _____, 2022

7
8 **APPROVED AS TO FORM BY CLASS COUNSEL:**

9
10
11 _____
Carolyn Hunt Cottrell
Ori Edelstein
Michelle S. Lim
Kristabel Sandoval
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608

Date: _____, 2022

12
13
14
15
16
17 **DEFENDANT:**

On behalf of Eskaton Properties Incorporated

Date: _____, 2022

18
19
20 **DEFENDANT:**

On behalf of California Healthcare Consultants, Inc.

Date: _____, 2022

21
22 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

23
24
25 _____
Mollie M. Burks
Linh T. Hua
Christie E. Yang
GORDON REESE SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

Date: _____, 2022

1 **PLAINTIFF:**

Sandeep Purewal

Date: _____, 2022

2
3 **PLAINTIFF:**

4 Vanessa Barber

Date: _____, 2022

5
6 **PLAINTIFF:**

7 
Cherra Redd

Date: 11/5, 2022

8
9 **APPROVED AS TO FORM BY CLASS COUNSEL:**

10 _____
11 Carolyn Hunt Cottrell
12 Ori Edelstein
13 Michelle S. Lim
14 Kristabel Sandoval
15 SCHNEIDER WALLACE
16 COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608

Date: _____, 2022

17 **DEFENDANT:**

18 On behalf of Eskaton Properties Incorporated

Date: _____, 2022

19
20 **DEFENDANT:**

21 On behalf of California Healthcare Consultants, Inc.

Date: _____, 2022

22
23 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

24 _____
25 Mollie M. Burks
26 Linh T. Hua
27 Christie E. Yang
28 GORDON REESE SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

Date: _____, 2022

1 **PLAINTIFF:**

2 _____
3 Sandeep Purewal

Date: _____, 2022

4 **PLAINTIFF:**

5 _____
6 Vanessa Barber

Date: _____, 2022

7 **PLAINTIFF:**

8 _____
9 Cherra Redd

Date: _____, 2022

10 **APPROVED AS TO FORM BY CLASS COUNSEL:**

11 

Date: November 22, 2022

12 Carolyn Hunt Cottrell
13 Ori Edelstein
14 Michelle S. Lim
15 Kristabel Sandoval
16 SCHNEIDER WALLACE
17 COTTRELL KONECKY LLP
18 2000 Powell Street, Suite 1400
19 Emeryville, California 94608

20 **DEFENDANT:**

21 _____
22 On behalf of Eskaton Properties Incorporated

Date: _____, 2022

23 **DEFENDANT:**

24 _____
25 On behalf of California Healthcare Consultants, Inc.

Date: _____, 2022

26 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

27 _____
28 Mollie M. Burks
Linh T. Hua
Christie E. Yang
GORDON REESE SCULLY MANSUKHANI, LLP
633 West Fifth Street, 52nd floor
Los Angeles, CA 90071

Date: _____, 2022

1 **PLAINTIFF:**

Sandeep Purewal

Date: _____, 2022

2
3 **PLAINTIFF:**

4 Vanessa Barber

Date: _____, 2022

5
6 **PLAINTIFF:**

7 Cherra Redd

Date: _____, 2022

8
9 **APPROVED AS TO FORM BY CLASS COUNSEL:**

10
11 _____
12 Carolyn Hunt Cottrell
13 Ori Edelstein
14 Michelle S. Lim
15 Kristabel Sandoval
16 SCHNEIDER WALLACE
17 COTTRELL KONECKY LLP
18 2000 Powell Street, Suite 1400
19 Emeryville, California 94608


Date: _____, 2022

20
21 **DEFENDANT:**

22 
23 On behalf of Eskaton Properties Incorporated

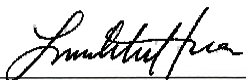
Date: 12/8/, 2022

24
25 **DEFENDANT:**

26 
27 On behalf of California Healthcare Consultants, Inc.

Date: 12/8, 2022

28
29 **APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

30
31 
32 Mollie M. Burks
33 Linh T. Hua
34 Christie E. Yang
35 GORDON REESE SCULLY MANSUKHANI, LLP
36 633 West Fifth Street, 52nd floor
37 Los Angeles, CA 90071

Date: December 12, 2022

EXHIBIT 3

NOTICE OF SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY

Khayo Sishi et al. v. Eskaton Properties Inc., et al.,
Superior Court of California, County of Alameda, Case Number RG21100764

You could get a payment from this class action settlement if you worked for Eskaton Properties Incorporated and California Healthcare Consultants, Inc. in California at any time during the period from June 2, 2017 through [INSERT JUNE 11 OR PRELIMINARY APPROVAL DATE OR EARLIER DATE DETERMINED BY DEFENDANT], 2022.

The Superior Court of California authorized this notice. This is not a solicitation from a lawyer. This is not a lawsuit against you, and you are not being sued. However, your legal rights are affected whether you act or do not act.

You are receiving this Notice of Settlement (“Notice”) because the records of Eskaton Properties Incorporated and California Healthcare Consultants, Inc., (collectively, “Defendants”)¹ show you performed work for Defendants and/or Releasees in California sometime between June 2, 2017 and [INSERT JUNE 11 OR PRELIMINARY APPROVAL DATE OR EARLIER DATE DETERMINED BY DEFENDANT], 2022. The records indicate you are a potential class member and **you may be entitled to receive money from a Settlement² in this case, as described below.**

1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself (“opt out”) of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement in the event the Court denies your objection.

The Superior Court of California, County of Alameda, has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on [REDACTED], 2022 at [REDACTED], before the Honorable Eumi Lee at the Hayward Hall of Justice, 24405 Amador Street, Hayward, CA 94544 in Department 512.

2. What Is This Case About?

This lawsuit alleges that individuals whom Defendants and/or Releasees employed as hourly non-exempt employees between June 2, 2017 and [INSERT JUNE 11 OR PRELIMINARY APPROVAL DATE OR EARLIER DATE DETERMINED BY DEFENDANT], 2022 were not compensated for all hours worked, including at the minimum wage and overtime rates, were not

¹ Including Releasees: Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton Village-Placerville, Inc., Eskaton Village-Roseville, Inc., Eskaton Lodge Granite Bay, Inc., Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O’Connor Woods Housing Corporation, Inc.

² This notice summarizes the proposed Settlement. The capitalized terms in this Notice of Settlement have defined meanings that are set out in detail in the Settlement Agreement. To review a copy of the Settlement Agreement, please visit the Settlement website at [INSERT URL].

provided complaint meal and rest breaks, were not reimbursed for all necessary business expenses, were not compensated for all costs of mandatory physical exams and/or drug testing, were not compensated for reporting time pay, were not compensated for sick time at the appropriate rate, were not provided written notice of material terms of employment, were not provided all wages during employment and at separation from employment, and were not provided timely and compliant itemized wage statements. This lawsuit seeks recovery of unpaid wages, statutory damages, civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”), restitution, interest, attorneys’ fees and costs. The claims in this lawsuit are brought under California law.

Defendants contend that they have strong legal and factual defenses to these claims, but they recognize the risks, distractions, and costs associated with litigation. Defendants contend that the wage and hour policies and practices at issue are lawful and have been lawful throughout the relevant time period. Defendants also contend that Plaintiffs’ claims do not meet the requirements for class certification.

This Settlement is the result of good faith, arm’s length negotiations between Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Defendants.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendants’ defenses.

The Settlement Administrator has created a Settlement website, which can be accessed at [INSERT URL]. The Settlement website allows interested persons to view the Settlement Agreement, all papers filed by Class Counsel to obtain Court approval of the Settlement Agreement, and this Notice of Settlement (in generic form). The Settlement website also provides contact information for Class Counsel and the Settlement Administrator.

3. How Will the Settlement Payment Be Distributed?

The Gross Settlement Amount (GSA) is \$5,500,000.00. The GSA will mostly be distributed to the current and former employees who meet the definitions for participating in the Settlement, but it will also be used to pay for attorneys’ fees and costs awarded by the Court, any enhancement payments to Plaintiffs that are awarded by the Court, all Settlement Administrator’s costs, and a payment to the California Labor and Workforce Development Agency (LWDA) that is required by the PAGA.

The Settlement Administrator’s costs are estimated to be no more than \$60,000, and this amount will be paid from the GSA.

The Named Plaintiffs will ask the Court to award them in the amounts of up to \$10,000 to Plaintiff Khayo Sishi and up to \$5,000.00 each to Plaintiffs Sandeep Purewal, Cherra Redd, and Zenaya White³ for their services to the Settlement Class, paid from the GSA.

The attorneys for Plaintiffs and the Settlement Class (referred to as “Class counsel”) will ask the Court to award them up to 33% of the GSA, which is \$1,833,333.33, to compensate them for their services in this matter. Class Counsel will also request reimbursement for their actual attorneys’ costs, which are currently approximately \$29,242.97 (see Section 9 below), from the GSA. Class Counsel will file a motion with the Court setting forth the bases for their requested costs and fees.

The payment to the LWDA and Aggrieved Employees in connection with the PAGA component of the Settlement will be \$55,000.00, and this payment will be paid from the GSA.

After deductions of these amounts, what remains of the GSA (the total of the “Net Settlement Amount” and “Net PAGA Amount”) will be available to pay monetary Settlement Awards to Plaintiffs, Aggrieved Employees, and all Class Members who do not opt out of the Settlement Class (collectively, “Settlement Class Members”).

4. How Much Can I Expect to Receive?

According to records maintained by Defendants, your total estimated settlement payment will be **[\$[class + PAGA]**, subject to any mandatory withholding or deductions. This amount is an estimated amount, and your final settlement payment is expected to differ from this amount (i.e., it could be higher or lower) and will be calculated as set forth below. All Settlement Award determinations will be based on Defendants’ records. Based on Defendants’ records, you are estimated to have worked **[REDACTED]** workweeks and **[REDACTED]** pay periods for Defendants or Releasees during the relevant period in the State of California.

You do not need to do anything to be sent your settlement payment. If you participate in the Settlement, you will have 180 days to cash the check. If at the conclusion of the 180-day check void period, there are any uncashed checks, those monies will be paid to the Parties’ agreed upon *cy pres* recipient, Legal Aid at Work, subject to the Court’s approval in the Final Approval Order, if the total residual amount is less than \$75,000. If the total residual amount is \$75,000 or greater, a second distribution will occur to those Participating Individuals who cashed their check on a *pro rata* basis.

If you dispute the number of workweeks as shown on this Notice of Settlement, you may produce evidence to the Settlement Administrator establishing the dates you contend to have worked for Defendants. To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting evidence. Unless you present convincing evidence proving you worked more workweeks than shown by Defendants’ records, your Settlement Award will be determined based on Defendants’ records. Any disputes must be postmarked by **[INSERT**

³ While Vanessa Barber is a Plaintiff in this action, she has chosen not to be a class representative, and as such, a service award will not be requested on her behalf. Zenaya White has a separate action against Defendants and she has been incorporated into the instant action, as such, a service award is being requested on her behalf.

[DATE] and should be mailed to [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. The Settlement Administrator will notify you of the decision on the dispute.

Payments to Settlement Class Members will be calculated on the number of eligible workweeks. Each Settlement Class Member will be eligible to receive a *pro rata* share of the Net Settlement Amount based on the total number of eligible workweeks that the Settlement Class Members worked for Defendants during the relevant periods, calculated as follows:

1. For each workweek, or fraction thereof, during which the Settlement Class Member worked for either Defendants at any time between June 2, 2017 and [INSERT JUNE 11 OR PRELIMINARY APPROVAL DATE OR EARLIER DATE DETERMINED BY DEFENDANT], 2022, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Class Member worked. Each workweek will be equal to one (1) settlement share.
2. The total number of settlement shares for all Settlement Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Settlement Class Member's number of settlement shares to determine the Settlement Class Member's *pro rata* portion of the Net Settlement Amount.

Additionally, Aggrieved Employee who worked for Defendants, including Releasees, in California any time between March 29, 2020 and [INSERT JUNE 11 OR PRELIMINARY APPROVAL DATE OR EARLIER DATE DETERMINED BY DEFENDANT], 2022, he or she shall be eligible to receive a *pro rata* portion of the Net PAGA Amount (i.e., \$13,750.00). The total number of pay periods for all Aggrieved Employees will be divided into the Net PAGA Amount to reach a per share dollar figure. That figure will then be multiplied by each Aggrieved Employee's number of pay periods to determine the Aggrieved Employees' *pro rata* portion of the Net PAGA Amount. The resulting Net PAGA Amount per Aggrieved Employee, if any, will be added to his or her share of the Net Settlement Amount, to determine the Settlement Award for that individual.

For tax reporting purposes, Settlement Awards will be allocated as follows: any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, one-fourth (1/4) shall be allocated to wages and three-fourths (3/4) shall be allocated to penalties and interest. None of the Parties or attorneys makes any representations concerning the tax consequences of this Settlement or your participation in it. Settlement Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement.

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your monetary Settlement Award. If you fail to keep your address current, you may not receive your Settlement Award.

5. What Are The Releases?

Upon Final Approval of the Settlement Agreement and funding of the total settlement amount, all Plaintiffs, Class Members, and Aggrieved Employees release claims as follows (“Released Claims”) against Defendants, their present and former parent companies, subsidiaries, related or affiliated companies, and their 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, including Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton Lodge Granite Bay, Inc., Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O’Connor Woods Housing Corporation, Inc., and Defendants’ Counsel (collectively, the “Releasees”):

- Plaintiffs and Class Members release Defendants and Releasees from any and all claims that are or could have been alleged in the operative complaints pending against Defendants and Releasees, and the Second Amended Complaint that the Parties will stipulate to in the Action, including but not limited to claims under California Labor Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, and 2810.5, reporting time wages, and violations of California Unfair Competition Laws (Cal. Bus. & Prof. Code §§ 17200, *et seq.*), and any amendment(s) thereto based on the factual allegations contained therein.
- Plaintiffs and the Aggrieved Employees, on behalf themselves and the Labor & Workforce Development Agency (“LWDA”), fully release the claims and rights to recover civil penalties against Defendants and Releasees on behalf of the LWDA and Aggrieved Employees to recover civil penalties, costs, expenses, attorneys’ fees, or interest for any Labor Code or Wage Order violation alleged or that could have been alleged in any Complaint or PAGA letters, including but not limited to the Second Amended Complaint and amended PAGA letter, in the Action, including violations of the following: California Labor Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802, 2810.5, and reporting time wages. The release period for PAGA claims runs from March 29, 2020 to [INSERT JUNE 11 OR PRELIMINARY APPROVAL DATE OR EARLIER DATE DETERMINED BY DEFENDANT].

6. What Are My Rights?

- **Do Nothing:** If you are a Class Member and you do not timely and validly opt-out, you will automatically become a part of the Settlement Class and you will receive your prorated Settlement Award. By doing nothing you will be bound by the Settlement including its release provisions.
- **Opt-Out:** If you are a Class Member and you do not wish to be bound by the Settlement, you must submit a written exclusion from the Settlement (“opt-out”), postmarked by [INSERT DATE]. The written request for exclusion must contain your full name, address, telephone number, email address (if applicable), last four digits of your social security number, and must be signed

individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. Any person who requests exclusion (opts out) of the settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.

- **Object:** If you are a Class Member and wish to object to the Settlement, you must submit a written statement objecting by [INSERT DATE] to the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR ADDRESS]. The statement must state the factual and legal grounds for your objection to the settlement. The statement must state your full name, address, telephone number, and email address (if applicable), and must be signed by you.

If you mail a written objection, you may also, if you wish, appear at the Final Approval Hearing to discuss your objection with the Court and the parties to the lawsuit. Your written objection must state whether you will attend the Final Approval Hearing, and your written notice of your intention to appear at the Final Approval Hearing must be filed with the Court and served upon Class Counsel and Defendants' counsel on or before the Notice Deadline, [INSERT DATE]. To be heard at the Final Approval Hearing you must also not opt out of the Settlement. If you wish to object to the Settlement but fail to return your timely written objection in the manner specified above, you shall be deemed to have waived any objection and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. The postmark date of mailing to the Class Counsel and Defendants' Counsel shall be the exclusive means for determining that an objection is timely mailed to counsel. Objections shall only be considered if the Settlement Class Member has not opted out of the Settlement. The failure to submit a written objection as a prerequisite to appearing in court to object to the settlement may be excused upon a showing of good cause.

7. Can Defendants Retaliate Against Me for Participating in this Lawsuit?

No. Your decision as to whether or not to participate in this lawsuit will in no way affect your work or employment with Defendants or future work or employment with Defendants. It is unlawful for Defendants to take any adverse action against you as a result of your participation in this lawsuit. In fact, Defendants encourage you to participate in this Settlement.

8. Who Are the Attorneys Representing Plaintiffs and the Settlement Class?

Plaintiffs and the Settlement Class Members are represented by the following attorneys acting as Class Counsel:

Carolyn H. Cottrell
Ori Edelstein
Michelle S. Lim
Kristabel Sandoval
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (800) 689-0024

Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
mlim@schneiderwallace.com
ksandoval@schneiderwallace.com

Edwin Aiwarzian
Lawyers for Justice, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Tel: (818) 265-1020 / Fax: (818) 265-1021

Robert Drexler
Robert.drexler@capstonelawyers.com
Molly DeSario
Molly.desario@capstonelawyers.com
Jonathan Lee
Jonathan.Lee@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

9. How Will the Attorneys for the Settlement Class Be Paid?

Class Counsel will be paid from the Gross Settlement Amount of \$5,500,000. You do not have to pay the attorneys who represent the Class Members. The Settlement Agreement provides that Class Counsel will receive attorneys' fees of up to one-third (1/3) of \$5,500,000 (i.e., \$1,833,333.33) plus their out-of-pocket costs, currently estimated at approximately \$29,242.97. Class Counsel will file a Motion for Attorneys' Fees and Costs with the Court. The amount of attorneys' fees and costs awarded will be determined by the Court at the Final Approval Hearing.

10. Where can I get more information?

If you have questions about the Notice or Settlement, or if you did not receive this Notice in the mail and you believe that you are a Class Member, you should contact the Settlement Administrator or Class Counsel.

This Notice is only a summary. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at the Settlement website at [INSERT URL], by contacting the Settlement Administrator at [REDACTED], by contacting Class Counsel toll-free at (800) 689-0024, or by accessing the Court docket in this case for a fee through the Court's electronic public records system at <https://publicrecords.alameda.courts.ca.gov/prs>.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.