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behalf of himself and all others similarly situated  
and aggrieved

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TOTAL EDUCATION SOLUTIONS, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

JESUS R. GONZALEZ, on behalf of himself  
and all others similarly situated and aggrieved,

Plaintiff,

v.

TOTAL EDUCATION SOLUTIONS, INC.,  
a California corporation; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO.: 20STCV37984

[Assigned to the Hon. Maren Nelson, in  
Dept. 17]

**CLASS ACTION**

**JOINT STIPULATION RE: CLASS  
ACTION AND REPRESENTATIVE  
ACTION SETTLEMENT**

Action Filed: October 5, 2020

Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement  
("Settlement" or "Agreement" or "Settlement Agreement") is made by and between plaintiff  
JESUS R. GONZALEZ ("Plaintiff") individually and on behalf of the Settlement Class, on the  
one hand; and defendant TOTAL EDUCATION SOLUTIONS, INC. ("TES" or "Defendant"),

on the other hand, in the lawsuit entitled *Jesus R. Gonzalez v. Total Education Solutions, Inc.*, filed in Los Angeles County Superior Court, Case No. 20STCV37984 (the “Action”). Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

## **1. DEFINITIONS**

**A. “Action”** means *Jesus R. Gonzalez v. Total Education Solutions, Inc.* filed in Los Angeles Superior Court, Case No. 20STCV37984.

**B. “Aggrieved Employees”** means drivers working for Defendant during the PAGA Period as non-exempt, hourly-paid employees in California.

**C. “Class Counsel”** means: David D. Bibiyan and Diego Aviles of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

**D. “Class Notice”** means the notice sent to class members after preliminary approval of the settlement in the manner described in Paragraph 9(A) of this agreement.

**E. “Class Period”** means the period from October 5, 2016 through May 24, 2022.

**F. “Court”** means the Superior Court of the State of California for the County of Los Angeles.

**G. “Final Approval Date”** means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

**H. “Defendant”** means Total Education Solutions, Inc.

**I. “Employer Taxes”** means employer-funded taxes and contributions imposed on the wage portions of the Individual Settlement Payments under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

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1           **J. “General Release”** means the broader release of claims by Plaintiff, which is in  
2 addition to Plaintiff’s limited release of claims as a Participating Class Member.

3           **K. “Gross Settlement Amount”** means a non-reversionary fund in the sum of One  
4 Hundred Thousand Dollars and Zero Cents (\$100,000.00),<sup>1</sup> which shall be paid by Defendant,  
5 from which all payments for the Individual Settlement Payments to Participating Class Members,  
6 the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and  
7 expenses to Class Counsel, Settlement Administration Costs, the Service Award, the PAGA  
8 Payment, and the LWDA Payment shall be paid. It expressly excludes Employer Taxes, which  
9 shall be paid by Defendant separate, apart, and in addition to the Gross Settlement Amount.

10           **L. “Individual PAGA Payment”** means a payment made to an Aggrieved  
11 Employee for his or her share of the PAGA Payment, which may be in addition to his or her  
12 Individual Settlement Share if he or she is also a Participating Class Member.

13           **M. “Individual Settlement Payment”** means a payment to a Participating Class  
14 Member of his or her net share of the Net Settlement Amount.

15           **N. “Individual Settlement Share”** means the gross amount of the Net Settlement  
16 Amount that a Participating Class Member is projected to receive based on the number of  
17 Workweeks that he or she worked as a Settlement Class Member during the Class Period which  
18 shall be reflected in his or her Class Notice.

19           **O. “LWDA Payment”** means the payment to the State of California Labor and  
20 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total  
21 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross  
22 Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and Zero Cents  
23 (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand and Zero  
24 Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Five Thousand  
25 Dollars and Zero Cents (\$5,000.00) will be paid to Aggrieved Employees on a *pro rata* basis  
26 based on the Workweeks worked for Defendant as a non-exempt, hourly-paid employee in  
27 California in the PAGA Period (*i.e.* the PAGA Payment).

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<sup>1</sup> As the same may be increased in accordance with Paragraph 17, below.

1           **P.       “Net Settlement Amount”** means the portion of the Gross Settlement Amount  
2 that is available for distribution to the Participating Class Members after deductions for the Court-  
3 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award  
4 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA  
5 Payment, and the PAGA Payment.

6           **Q.       “Operative Complaint” or “Complaint”** means the Second Amended  
7 Complaint that was filed with the Court on June 23, 2021.

8           **R.       “PAGA Payment** is the is the 25% portion of the Twenty Thousand Dollars and  
9 Zero Cents (\$20,000.00) that is allocated toward PAGA penalties, Five Thousand Dollars and  
10 Zero Cents (\$5,000.00) that will be paid to Aggrieved Employees on a *pro rata* basis based on  
11 the Workweeks worked as non-exempt, hourly-paid employees in California in the PAGA  
12 Period, which would be in addition to their Individual Settlement Payment if they are  
13 Participating Class Members, as well.

14           **S.       “PAGA Period”** means the period from July 28, 2019 through May 24, 2022.

15           **T.       “Participating Class Members”** means all Settlement Class Members who do  
16 not submit a timely and valid Request for Exclusion.

17           **U.       “Participating Individual Settlement Share”** means the gross amount of the Net  
18 Settlement Amount that a Participating Class Member is eligible to receive based on the number  
19 of Workweeks that he or she worked as a Settlement Class Member during the Class Period once  
20 all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she  
21 may be entitled if he or she is also an Aggrieved Employee.

22           **V.       “Plaintiff”, “Named Plaintiff” or “Class Representative”** shall refer to  
23 plaintiff Jesus R. Gonzalez.

24           **W.       “Preliminary Approval Date”** means the date on which the Court enters an  
25 Order granting preliminary approval of the Settlement.

26           **X.       “Released Parties”** shall mean Defendant and each of its past, present, and future  
27 respective subsidiaries, dba’s, affiliates, parents, insurers and reinsurers, and company-sponsored  
28 employee benefit plans of any nature and their successors and predecessors in interest, including

all of their officers, directors, shareholders, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, administrators, fiduciaries, trustees, and agents.

**Y. “Response Deadline”** means the deadline for Settlement Class Members to mail any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the exclusive means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the Response Deadline.

**Z. “Request for Exclusion”** means a written request to be excluded from the Settlement Class pursuant to Paragraph 9(C) below.

**AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval, will be paid out of the Gross Settlement Amount.

**BB. “Settlement Administration Costs”** means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, translating the Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments, Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated taxes and withholdings, providing declarations, generating Individual Settlement Payment checks and related tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, and to the LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related information, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated

1 not to exceed \$5,900.00. If the actual amount of the Settlement Administration Costs is less than  
2 \$5,900.00, the difference between \$5,900.00 and the actual Settlement Administration Costs  
3 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed  
4 \$5,900.00 then such excess will be paid solely from the Gross Settlement Amount and Defendant  
5 will not be responsible for paying any additional funds in order to pay these additional costs.

6 **CC. “Settlement Administrator”** means the Third-Party Administrator mutually  
7 agreed upon by the Parties that will be responsible for the administration of the Settlement  
8 including, without limitation, translating the Class Notice in Spanish, the distribution of the  
9 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount  
10 and related matters under this Agreement.

11 **DD. “Settlement Class” or “Settlement Class Members” or “Class Members”**  
12 means all current and former non-exempt, hourly-paid employees who worked as drivers in  
13 California for Defendant at any time during the Class Period and who did not execute an  
14 arbitration agreement.

15 **EE. “Workweeks”** means the number of weeks that a Settlement Class Member was  
16 employed by and worked for the Defendant at least one shift in a non-exempt, hourly position  
17 during the Class Period in California, based on hire dates, re-hire dates (as applicable), and  
18 termination dates (as applicable).

## 19 **2. BACKGROUND**

20 **A.** On July 28, 2020, Plaintiff filed with the LWDA and served on Defendant a notice  
21 under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the LWDA to  
22 recover civil penalties for Aggrieved Employees for various Labor Code violations. (“PAGA  
23 Notice”).

24 **B.** On October 5, 2020, after sixty-five (65) days had passed without any action by  
25 the LWDA with respect to the labor code violations alleged in the PAGA Notice, Plaintiff filed  
26 a putative wage-and-hour class and representative action alleging that, during the Class Period,  
27 Defendant, as it pertains to Class Members: (1) failed to pay overtime wages; (2) failed to pay  
28 minimum wages; (3) failed to provide meal periods or compensation in lieu thereof; (4) failed to

1 provide rest periods or compensation in lieu thereof; (5) failed to pay wages upon separation  
2 from employment; (6) failed to issue compliant wage statements; (7) failed to indemnify  
3 employees for business expenses; and (8) violated the Labor Code as alleged in the PAGA Notice  
4 for which Plaintiff sought PAGA civil penalties (the “Action”).

5 **C.** On March 2, 2021, Plaintiff also filed with the LWDA an amended PAGA Notice,  
6 stating Plaintiff also sought to seek PAGA civil penalties against The Institute for Redesign of  
7 Learning (“Institute”) for alleged violations of the Labor Code (“Amended PAGA Notice”).  
8 Thereafter, Plaintiff filed a First Amended Complaint in the Action adding as a named defendant,  
9 the Institute.

10 **D.** On June 23, 2021, after sixty-five (65) days had passed without any action by the  
11 LWDA with respect to the Labor Code violations alleged in the Amended PAGA Notice, Plaintiff  
12 filed a Second Amended Complaint in the Action, now seeking PAGA civil penalties against the  
13 Institute for the Labor Code violations as alleged in the Amended PAGA Notice, in addition to  
14 Defendant.

15 **E.** Shortly thereafter, Plaintiff and Defendant (collectively, the “Parties”) agreed to  
16 exchange informal discovery and attend an early mediation, in which Plaintiff was provided with,  
17 among other things: (1) hire dates, termination dates, and rates of pay for 33% of Class Members  
18 working as drivers for Defendant through mediation; (2) Defendant’s employee handbooks  
19 containing the Defendant’s policies in effect during the Class Period; (3) Time and payroll  
20 records for 33% of Class Members working through mediation; (4) all documents pertaining to  
21 Plaintiff’s employment with Defendant.

22 **F.** On March 24, 2022, the Parties participated in a full-day mediation before Marc  
23 Feder, Esquire, a well-regarded mediator experienced in mediating complex labor and  
24 employment matters. With the aid of the mediator’s evaluation, the Parties reached the  
25 Settlement to resolve the Action. As part and parcel to the Settlement, the Parties and the Institute  
26 agreed that the Institute will be dismissed without prejudice if and when final approval if this  
27 Settlement is granted by the Court.  
28

1           **G.**     Class Counsel has conducted significant investigation of the law and facts relating  
2 to the claims asserted in the Action and the PAGA Notice, and have concluded that that the  
3 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement  
4 Class, taking into account the sharply contested issues involved, the expense and time necessary  
5 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the  
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information  
7 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits  
8 to be received by Settlement Class Members.

9           **H.**     Defendant has concluded that, because of the substantial expense of defending  
10 against the Action, the length of time necessary to resolve the issues presented herein, the  
11 inconvenience involved, and the concomitant disruption to its business operations, it is in its best  
12 interest to accept the terms of this Agreement. Defendant denies each of the allegations and  
13 claims asserted against it in the Action and the PAGA Notice. However, Defendant nevertheless  
14 desires to settle the Action for the purpose of avoiding the burden, expense and uncertainty of  
15 continuing litigation and for the purpose of putting to rest the controversies engendered by the  
16 Action.

17           **I.**     This Agreement is intended to and does effectuate the full, final, and complete  
18 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all  
19 PAGA Released Claims of Plaintiff and, to the extent permitted by law, of the State of California  
20 and Aggrieved Employees.

### 21           **3.     JURISDICTION**

22           The Court has jurisdiction over the Parties and the subject matter of the Action. The  
23 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the  
24 applicable statutes. After the Court has granted Final Approval of the Settlement and entered  
25 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment  
26 pursuant to California Rule of Court, rule 3.769, subdivision (h).

### 27           **4.     STIPULATION OF CLASS CERTIFICATION**

28           The Parties stipulate to the certification of the Settlement Class under this Agreement for



purposes of settlement only.

## **5. MOTIONS FOR APPROVAL OF SETTLEMENT**

After full execution of this Agreement, Plaintiff will move for an order granting preliminary approval of the Settlement, approving and directing the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally certifying the Settlement Class for settlement purposes only, and approving the deadlines proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and Objections. If and when the Court preliminarily approves the Settlement, and after administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval Order, Plaintiff will move for an order finally approving the Settlement and seek entry of a Judgment in line with this Settlement. The Parties may both respond to any Objections lodged to final approval of the Settlement up to five (5) court days before the Final Approval Hearing.

## **6. STATEMENT OF NO ADMISSION**

Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff and the Settlement Class with respect to any claims or allegations asserted in the Action and the PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein, in the event that this Agreement is not approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or remedies, or defenses in the Action or the PAGA Notice, and Defendant will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Action and the PAGA Notice. The Parties shall be restored to their respective positions in the Action prior to the entry of this Settlement.

## **7. RELEASE OF CLAIMS**

### **A. Release by All Participating Class Members.**

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross Settlement Amount and Employers’ Taxes necessary to effectuate the Settlement, Plaintiff and

1 all Participating Class Members release all claims against the Released Parties asserted in the  
2 Operative Complaint, or any and all claims that may be asserted against the Released Parties  
3 based on the factual allegations in the Operative Complaint, as follows: For the duration of the  
4 Class Period, the release includes, for Participating Class Members: (a) all claims for failure to  
5 pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for failure to  
6 provide compliant meal periods, or premium compensation in lieu thereof; (d) all claims for  
7 failure to provide compliant rest periods, or premium compensation in lieu thereof (e) all claims  
8 for the failure to timely pay wages upon termination or resignation; (f) all claims for non-  
9 compliant wage statements; (g) all claims for failure to reimburse employees for business  
10 expenses; and (h) all claims asserted through California Business & Professions Code section  
11 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint  
12 (the “Class Released Claims”).

13 **B. Release by All Aggrieved Employees.**

14 For Aggrieved Employees, and, to the extent permitted by law, the State of California,  
15 the release includes for the duration of the PAGA Period, all claims asserted in the PAGA Notice,  
16 Amended PAGA Notice, and thereafter alleged in the Operative Complaint, for PAGA civil  
17 penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1, and 2699 in connection with  
18 alleged violations of Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 246 *et seq.*, 432,  
19 510, 512, 1174, 1194, 1194.2 1197, 1197.5, 1198.5, 2802, and 2810.5 (the “PAGA Released  
20 Claims”). The Class Released Claims and PAGA Released Claims shall be referred to herein as  
21 the “Released Claims”.

22 **C. Claims Not Released**

23 The releases above expressly exclude all other claims, including claims for vested  
24 benefits, wrongful termination, unemployment insurance, disability, social security, workers’  
25 compensation, and any other claims outside of the Class Released Claims of Participating Class  
26 Members arising during the Class Period and the PAGA Released Claims of Aggrieved  
27 Employees (and, to the extent permitted by law, the State of California) arising outside of the  
28 PAGA Period.

1           **D. General Release.**

2           Effective only upon the entry of an Order granting Final Approval of the Settlement, entry  
3 of Judgment, and payment by Defendant to the Settlement Administrator selected of the full  
4 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in  
5 addition to the Released Claims, Plaintiff makes the additional following General Release:  
6 Plaintiff releases the Released Parties from all claims, demands, rights, liabilities and causes of  
7 action of every nature and description whatsoever, known or unknown, asserted or that might  
8 have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule,  
9 law or regulation arising out of, relating to, or in connection with any act or omission of the  
10 Released Parties through the date of full execution of this Agreement in connection with  
11 Plaintiff's employment with Defendant or the termination thereof, except for any and all other  
12 claims that may not be released as a matter of law through this Agreement. To the extent of the  
13 General Release provided herein, Plaintiff stipulates and agrees that, upon entry of an Order  
14 granting Final Approval of the Settlement, entry of Judgment, and payment by Defendant to the  
15 Settlement Administrator selected of the full Gross Settlement Amount and Employers' Taxes  
16 necessary to effectuate the Settlement, he shall have expressly waived and relinquished, to the  
17 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the  
18 California Civil Code, or any other similar provision under federal or state law, which provides:

19                     A general release does not extend to claims that the creditor or  
20                     releasing party does not know or suspect to exist in his or her  
21                     favor at the time of executing the release and that, if known by  
22                     him or her, would have materially affected his or her settlement  
23                     with the debtor or released party.

24           **8. SETTLEMENT ADMINISTRATOR**

25           **A.**     Plaintiff and Defendant, through their respective counsel, have selected ILYM  
26 Group, Inc. to administer the Settlement, which includes but is not limited to translating the Class  
27 Notice to Spanish, distributing and responding to inquiries about the Class Notice and calculating  
28 all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the  
Settlement Administrator, currently estimated to be \$5,900.00 will be paid from the Gross  
Settlement Amount. If the actual amount of the Settlement Administration Costs is less than

1 \$5,900.00, the difference between \$5,900.00 and the actual Settlement Administration Costs  
2 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed  
3 \$5,900.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant  
4 will not be responsible for paying any additional funds in order to pay these additional costs.

5 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION**  
6 **PROCESS**

7 **A. Notice to the Settlement Class Members**

8 (1) Within seven (7) calendar days after the Preliminary Approval Date,  
9 Defendant's Counsel shall provide the Settlement Administrator with information with respect  
10 to each Settlement Class Member, including his or her: (1) name; (2) last known address(es)  
11 currently in Defendant's possession, custody, or control; (3) last known telephone number(s)  
12 currently in Defendant's possession, custody, or control; (4) last known Social Security  
13 Number(s) in Defendant's possession, custody, or control; and (5) the dates of employment (*i.e.*,  
14 hire dates, and, if applicable, re-hire date(s) and/or separation date(s)) for each Settlement Class  
15 Member ("Class List"). Absent mutual written agreement of counsel for the Parties or Court  
16 order, the Settlement Administrator will keep this database confidential and secure and use it  
17 only for the purposes described herein. The Settlement Administrator shall perform an address  
18 search using the United States Postal Service National Change of Address ("NCOA") database  
19 and update the addresses contained on the Class List with the newly-found addresses, if any.  
20 Within seven (7) calendar days, or soon thereafter, of receiving the Class List from Defendant,  
21 the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement  
22 Class Members via first-class regular U.S. Mail using the most current mailing address  
23 information available. The Settlement Administrator shall maintain the Class List and digital  
24 copies of all the Settlement Administrator's records evidencing the giving of notice to any  
25 Settlement Class Member, for at least four (4) years from the Final Approval Date.

26 (2) The Class Notice will set forth:  
27  
28

- 1 (a) the Settlement Class Member's estimated Individual  
2 Settlement Payment and Individual PAGA Payment,  
3 and the basis for each;
- 4 (b) the information required by California Rule of Court,  
5 rule 3.766, subdivision (d);
- 6 (c) the material terms of the Settlement;
- 7 (d) the proposed Settlement Administration Costs;
- 8 (e) the definition of the Settlement Class;
- 9 (f) a statement that the Court has preliminarily approved  
10 the Settlement;
- 11 (g) how the Settlement Class Member can obtain  
12 additional information, including contact information  
13 for Class Counsel;
- 14 (h) information regarding opt-out and objection  
15 procedures;
- 16 (i) the date and location of the Final Approval Hearing;  
17 and
- 18 (j) that the Settlement Class Member must notify the  
19 Settlement Administrator no later than the Response  
20 Deadline if the Settlement Class Member disputes the  
21 accuracy of the number of Workweeks as set forth on  
22 his or her Class Notice ("Workweek Dispute"). If a  
23 Settlement Class Member fails to timely dispute the  
24 number of Workweeks attributed to him or her in  
25 conformity with the instructions in the Class Notice,  
26 then he or she shall be deemed to have waived any  
27 objection to its accuracy and any claim to any  
28 additional settlement payment based on different data.

1           (3) If a Class Notice from the initial notice mailing is returned as  
2 undeliverable, the Settlement Administrator will attempt to obtain a current address for the  
3 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)  
4 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class  
5 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator  
6 is successful in obtaining a new address, it will within three business (3) days re-mail the Class  
7 Notice to the Settlement Class Member. Further, any Class Notices that are returned to the  
8 Settlement Administrator with a forwarding address before the Response Deadline shall be  
9 promptly re-mailed to the forwarding address affixed thereto.

10           (4) No later than seven (7) calendar days from the Response Deadline, the  
11 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the  
12 completion of the notice process, including the number of attempts to obtain valid mailing  
13 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,  
14 and copies of all Requests for Exclusion and Objections received by the Settlement  
15 Administrator.

16           **B. Objections.**

17           Only Participating Class Members may object to the Settlement. In order for any  
18 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must  
19 do so by mailing a written objection to the Settlement Administrator at the address or phone  
20 number provided on the Class Notice no later than the Response Deadline. The Settlement  
21 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's  
22 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which  
23 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection  
24 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four  
25 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of  
26 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the  
27 Objection, along with whatever legal authority, if any, the Objector asserts in support of the  
28 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member

1 will remain a member of the Settlement Class and if the Court approves this Agreement, the  
2 Settlement Class Member will be bound by the terms of the Settlement in the same way and to  
3 the same extent as a Settlement Class Member who does not object. The date of mailing of the  
4 Class Notice to the objecting Settlement Class Member shall be conclusively determined  
5 according to the records of the Settlement Administrator. Settlement Class Members need not  
6 object in writing to be heard at the Final Approval Hearing; they may object or comment in  
7 person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond  
8 to any objection lodged with the Court up to five (5) court days before the Final Approval  
9 Hearing.

10 **C. Requesting Exclusion.**

11 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the  
12 Settlement by mailing a written request to be excluded from the Settlement ("Request for  
13 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.  
14 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class  
15 Member's Social Security Number; (3) the Class Member's signature; and (4) any statement  
16 indicating that the Class Member does not wish to participate in the Settlement Agreement. The  
17 Settlement Administrator shall immediately provide notice of all Requests for Exclusion to Class  
18 Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it receives,  
19 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any  
20 Settlement Class Member who requests exclusion using this procedure will not be entitled to  
21 receive any payment from the Settlement and will not be bound by the Settlement Agreement or  
22 have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member  
23 who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion  
24 will be bound by all terms of the Settlement, including those pertaining to the Released Claims,  
25 as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is  
26 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an  
27 objection. If a Settlement Class Member submits an Objection and a Request for Exclusion, the  
28 Request for Exclusion will control and the Objection will be overruled. Settlement Class

Members who worked during the PAGA Period as Aggrieved Employees that submit a valid Request for Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA Payments, and will be bound by the release of the PAGA Released Claims.

**D. Disputes Regarding Settlement Class Members' Workweek Data.**

Each Settlement Class Member may dispute the number of Workweeks attributed to him or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to the Settlement Administrator by the Settlement Class Member, postmarked on or before the Response Deadline. The Settlement Administrator shall immediately provide notice of all disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the dispute.

**10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL PAGA PAYMENTS**

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period. Individual PAGA Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as follows:

**A.** The Settlement Administrator will determine the total number of Workweeks worked by each Settlement Class Member during the Class Period ("Class Member's Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the



1 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period  
2 (“PAGA Workweeks”).

3 **B.** To determine each Settlement Class Member’s Individual Settlement Share, the  
4 Settlement Administrator will use the following formula: Individual Settlement Share =  
5 (Settlement Class Member’s Workweeks ÷ Class Workweeks) × Net Settlement Amount.

6 **C.** To determine each Participating Class Member’s Participating Individual  
7 Settlement Share, the Settlement Administrator will determine the aggregate number of  
8 Workweeks worked by all Participating Class Members during the Class Period (“Participating  
9 Class Workweeks”) and use the following formula: Individual Settlement Share =  
10 (Participating Class Member’s Workweeks ÷ Participating Class Workweeks) × Net Settlement  
11 Amount.

12 **D.** The net amount of the Participating Individual Settlement Share is to be paid out  
13 to Participating Class Members by way of check and is referred to as “Individual Settlement  
14 Payment(s)”.

15 **E.** To determine each Aggrieved Employee’s Individual PAGA Payment, the  
16 Settlement Administrator will use the following formula: Aggrieved Employee’s Individual  
17 PAGA Payment = (Aggrieved Employee’s Workweeks ÷ PAGA Workweeks) x \$5,000.00 (the  
18 PAGA Payment).

19 **F.** Individual Settlement Payments and Individual PAGA Payments shall be paid  
20 to Participating Class Members and/or Aggrieved Employees by way of check. When a  
21 Participating Class Member is also an Aggrieved Employee, one check may be issued that  
22 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

## 23 **11. DISTRIBUTION OF PAYMENTS**

### 24 **A. Distribution of Individual Settlement Payments.**

25 Participating Class Members will receive an Individual Settlement Payment and  
26 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement  
27 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one  
28 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)

1 calendar days after expiration of the 180-day period, checks for such payments shall be  
2 canceled and funds associated with such checks shall be considered unpaid, unclaimed or  
3 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid  
4 Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil  
5 Procedure section 384, shall be transmitted to Legal Aid at Work, 180 Montgomery Street,  
6 Suite 600, San Francisco, California 94104, the *cy pres* recipient, for use in Los Angeles  
7 County. The Settlement Administrator shall prepare a report regarding the distribution plan  
8 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court  
9 by Class Counsel along with a proposed amended judgment that is consistent with the  
10 provisions of Code of Civil Procedure section 384.

11 **B. Funding of Settlement.**

12 Defendant shall, within fifteen (15) calendar days of Final Approval Date make payment  
13 of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph 17 of this  
14 Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal Revenue  
15 Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account (“QSA”)  
16 with an FDIC insured banking institution, for distribution in accordance with this Agreement and  
17 the Court’s Orders and subject to the conditions described herein.

18 **C. Time for Distribution.**

19 Within seven (7) calendar days after payment of the full Gross Settlement Amount and  
20 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator  
21 shall distribute Payments from the QSA for: (1) the Service Award to Plaintiff as specified in  
22 this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid  
23 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement  
24 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA  
25 Payment, as specified in this Agreement and approved by the Court; (5) Individual PAGA  
26 Payments as specified in this Agreement and approved by the Court, and (6) the balance  
27 remaining which shall constitute the Net Settlement Amount as specified in this Agreement and  
28 approved by the Court from which Individual Settlement Payments shall be made to Participating

Class Members, less applicable taxes and withholdings.

**12. ATTORNEYS' FEES AND LITIGATION COSTS**

Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys' fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 17 of this Agreement, amounts to Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00). Class Counsel shall further apply for, and Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval of the settlement in Action. The "future" aspect of the amounts stated herein includes, without limitation, all time and expenses expended by Class Counsel (including any appeals therein). There will be no additional charge of any kind to either the Settlement Class Members or request for additional consideration from Defendant for such work unless, Defendant materially breach this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

**13. SERVICE AWARD TO PLAINTIFF**

Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in and assistance with the Class Action. Any Service Award awarded to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

**14. TAXATION AND ALLOCATION**

- a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to

1 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS  
2 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties  
3 agree that the employees' share of taxes and withholdings with respect to the wage-portion of the  
4 Individual Settlement Share will be withheld from the Individual Settlement Share in order to  
5 yield the Individual Settlement Payment. The amount of federal income tax withholding will be  
6 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury  
7 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also  
8 be made pursuant to applicable state and/or local withholding codes or regulations.

9 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement  
10 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the  
11 "Code") and consistent with this Agreement. If the Code, the regulations promulgated  
12 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes  
13 set forth in this Section may be modified in a manner to bring Defendant into compliance with  
14 any such changes.

15 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to  
16 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of  
17 payroll taxes as described above.

18 d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this  
19 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement  
20 be relied upon as such within the meaning of United States Treasury Department Circular 230  
21 (31 C.F.R. Part 10, as amended) or otherwise.

## 22 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

23 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of  
24 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five  
25 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA  
26 and twenty-five percent (25%) (\$5,000.00) will be distributed to Aggrieved Employees on a *pro*  
27 *rata* basis based upon their respective Workweeks worked as Aggrieved Employees during the  
28 PAGA Period.

1                   **16. COURT APPROVAL**

2           This Agreement is contingent upon an order by the Court granting Final Approval of the  
3 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it  
4 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties  
5 shall be restored to their respective positions in the Action prior to entry of this Settlement. If  
6 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,  
7 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)  
8 the Court reserves any authority to issue any appropriate orders when denying approval; and/or  
9 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive  
10 the Settlement Agreement being voided or not approved, and which control in such an event.

11                   **17. INCREASE IN WORKWEEKS**

12           Defendant represents that there are no more than 2,550 Workweeks worked during the  
13 Class Period on October 16, 2016 through May 24, 2022. In the event the number of  
14 Workweeks worked by Class Members during the Class Period increases by more than 10%,  
15 or 255 Workweeks, then the Gross Settlement Amount shall be increased proportionally by the  
16 Workweeks in excess of 2,550 Workweeks multiplied by the Workweek Value. The  
17 Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement  
18 Amount (\$100,000.00) by 2,550, which amounts to a Workweek Value of \$39.22. Thus, for  
19 example, should there be 2,900 Workweeks in the Class Period, then the Gross Settlement  
20 Amount shall be increased by \$13,727.00. ((2,900 Workweeks – 2,550 Workweeks) x \$39.22  
21 per Workweek.) The Gross Settlement Amount shall not be reduced as a result of the total  
22 Workweeks falling below Defendant’s estimate of 2,550.

23                   **18. NOTICE OF JUDGMENT**

24           In addition to any duties set out herein, the Settlement Administrator shall provide  
25 notice of the Final Judgment entered in the Action by posting the same on its website for a  
26 period of no less than four (4) years.

27                   **19. MISCELLANEOUS PROVISIONS**

28           **A. Interpretation of the Agreement.**

1           This Agreement constitutes the entire agreement between the Parties with respect to its  
2 subject matter. Except as expressly provided herein, this Agreement has not been executed in  
3 reliance upon any other written or oral representations or terms, and no such extrinsic oral or  
4 written representations or terms shall modify, vary or contradict its terms. In entering into this  
5 Agreement, the Parties agree that this Agreement is to be construed according to its terms and  
6 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and  
7 enforced under the laws of the State of California, both in its procedural and substantive aspects,  
8 without regard to its conflict of law provisions. Any claim arising out of or relating to the  
9 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior  
10 Court of the State of California for the County of Los Angeles, and Plaintiff and Defendant  
11 hereby consent to the personal jurisdiction of the Court in the Action over it solely in connection  
12 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,  
13 and each of them, participated in the negotiation and drafting of this Agreement and had available  
14 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor  
15 Defendant may claim that any ambiguity in this Agreement should be construed against the other.  
16 The Agreement may be modified only by a writing signed by counsel for the Parties and approved  
17 by the Court.

18           **B.       Further Cooperation.**

19           The Parties and their respective attorneys shall proceed diligently to prepare and execute  
20 all documents, to seek the necessary approvals from the Court, and to do all things reasonably  
21 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they  
22 will not take any action inconsistent with this Agreement, including, without limitation,  
23 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any  
24 Party has taken actions inconsistent with the Settlement, including, without limitation,  
25 encouraging Class Members to opt out of the Settlement, the Court may take any corrective  
26 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*  
27 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or  
28 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of

1 opt-outs and/or objections.

2 **C. Counterparts.**

3 The Agreement may be executed in one or more actual or non-original counterparts, all  
4 of which will be considered one and the same instrument and all of which will be considered  
5 duplicate originals.

6 **D. Authority.**

7 Each individual signing below warrants that he or she has the authority to execute this  
8 Agreement on behalf of the Party for whom or which that individual signs.

9 **D. No Third-Party Beneficiaries.**

10 Plaintiff, Participating Class Members, Aggrieved Employees, the State of California,  
11 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-  
12 party beneficiaries.

13 **F. Deadlines Falling on Weekends or Holidays.**


14 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,  
15 or legal holiday, that deadline shall be continued until the following business day.

16 **G. Severability.**

17 In the event that one or more of the provisions contained in this Agreement shall for any  
18 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or  
19 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class  
20 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed  
21 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

22  
23 **IT IS SO AGREED:**

24 Dated: Jun 6, 2023, 2023

  
Jesus R Gonzalez (Jun 6, 2023 17:53 PDT)

25 JESUS R. GONZALEZ  
26 Plaintiff and Class Representative  
27  
28

1 Dated: 10/1/23, 2023

  
TOTAL EDUCATION SOLUTIONS, INC.  
Defendant  
By: Staci Hazlett  
Its: Human Resources Director

2  
3  
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5  
6 **AGREED AS TO FORM ONLY:**

7 Dated: \_\_\_\_\_, 2023

8 \_\_\_\_\_  
9 DAVID D. BIBIYAN  
VEDANG J. PATEL  
10 **Counsel for Plaintiff JESUS R. GONZALEZ**

11 Dated: \_\_\_\_\_, 2023

12 \_\_\_\_\_  
13 GRACE Y. HOROUPIAN  
14 SEAN T. KINGSTON  
15 **Counsel for Defendant, TOTAL**  
16 **EDUCATION SOLUTIONS, INC.**



1 Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
TOTAL EDUCATION SOLUTIONS, INC.

Defendant

By:

Its:

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3  
4  
5  
6 **AGREED AS TO FORM ONLY:**

7 Dated: June 7 \_\_\_\_\_, 2023

*David D. Bibiyan*

\_\_\_\_\_  
DAVID D. BIBIYAN

VEDANG J. PATEL

**Counsel for Plaintiff JESUS R. GONZALEZ**

8  
9  
10 Dated: June 1 \_\_\_\_\_, 2023

*Grace Y. Horoupiyan*

\_\_\_\_\_  
GRACE Y. HOROUPIAN

SEAN T. KINGSTON

**Counsel for Defendant, TOTAL  
EDUCATION SOLUTIONS, INC.**