

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
NORBIVI NASIMOVA, individually and on behalf of :
all others similarly situated, :
: Plaintiff, : **ECF**
: : 16 Civ. 01005 (SJ)(PK)
:
-against- :
:
ATTENTIVE HOME CARE AGENCY INC. d/b/a :
ALWAYS HOME CARE, ALWAYS HOME CARE :
AGENCY INC., YELENA PUSTILNIK and JOHN :
DOES #1-10, :
:
Defendants. :
----- x

**CLASS AND COLLECTIVE ACTION STIPULATION AND SETTLEMENT
AGREEMENT**

The parties to this action (the “Action”), hereby enter into this Class and Collective Action Stipulation and Settlement Agreement entered into as of January 31, 2020 (the “Stipulation”), subject to the approval of the District Court, pursuant to Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”).

1. RECITALS¹

The First Amended Class Action Complaint and Jury Demand (“First Amended Complaint”) in the Action, dated December 14, 2019, asserts class claims under the New York Labor Law (“NYLL”) and collective claims under the Fair Labor Standards Act (“FLSA”) alleging, *inter alia*, that Defendants failed to pay wages due under the NYLL, the FLSA, the New York Home Care Worker Wage Parity Law (“Wage Parity Law”) and the N.Y.C. Admin. Code, and failed to provide proper wage notices and statements under the Wage Theft Prevention

¹ Capitalized terms in this Recitals section shall have the meanings set forth below in Section 2 (Definitions).

Act, and sought recovery of unpaid wages, benefits, wage supplements, liquidated damages, pre-judgment interest, and attorneys' fees and costs, as well as injunctive and declaratory relief.

Plaintiffs' Counsel believes that the Claims have merit and, based upon the facts and law, the Plaintiffs should prevail on the Claims. However, Plaintiffs' Counsel also recognizes that the potential outcome for these Claims is uncertain, and that Plaintiffs are at risk of not prevailing on some or all of the Claims in the Action. Plaintiffs' Counsel also recognizes that complex actions such as these assert claims that are inherently difficult to prove and uncertain, and that there likely will be substantial cost and delay associated with continued prosecution of the Action. Plaintiffs' Counsel are also mindful of the inherent problems of proof likely to be encountered in prosecuting, and possible defenses to, the claims asserted and that could be asserted in the Action. Plaintiffs' Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits on the Named Plaintiff and all Settlement Class Members. Based on their evaluation, and after considering all attendant facts and circumstances, Plaintiffs' Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of the Named Plaintiff and all Settlement Class Members.

Defendants deny the wrongdoing alleged in the First Amended Complaint. This Stipulation shall in no event be construed or deemed to be evidence of, or an admission, presumption, or concession on the part of Defendants of any fault, liability, or wrongdoing as to any facts or claims asserted in the Action (or any infirmity in the defenses they have asserted or could assert in the Action), or any other actions or proceedings, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used against Defendants in the Action, or in any other action or proceeding, whether civil, criminal, or administrative.

In order to facilitate discussions of the possible settlement of the lawsuit, Defendants provided to Plaintiffs' Counsel business and payroll records relating to the hours worked by and amounts paid to the Named Plaintiff and the Settlement Class Members during their employment with Defendants.

Defendants and the Named Plaintiff, through Plaintiffs' Counsel, each analyzed Defendants' business and payroll records relating to the Named Plaintiff's and Settlement Class Members' Claims.

The Parties have engaged in extensive discussions and negotiations in an effort to reach a resolution of the Claims. The Parties agreed to and participated in a mediation session before JAMS Mediator Justice Allen Hurkin-Torres. The Parties themselves, along with their Counsel, were present at the mediation session.

On the basis of the aforementioned business and payroll records, and an analysis thereof, and recognizing the risks of continued litigation, including the risk that the Named Plaintiff and Settlement Class Members might obtain a recovery less favorable than, and/or comparable to, the recovery embodied in this Settlement, and that any recovery may not be obtained for several years, if at all, Class Counsel is satisfied that the terms and conditions of this Settlement are fair, reasonable, and adequate, and that this Settlement is in the best interests of the Named Plaintiff and the Settlement Class Members.

The Parties recognize that continued prosecution of the Action would be protracted and expensive, with an uncertain outcome, and accordingly agree that the Settlement should be consummated as set forth herein.

NOW THEREFORE, without any admission or concession on the part of the Named Plaintiff or any Settlement Class Member of any lack of merit in the Action whatsoever,

and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys that, subject to the approval of the District Court pursuant to the Fair Labor Standards Act and Rule 23 and to the satisfaction of the conditions set forth herein, in consideration of the benefits flowing to the Parties hereto from the Settlement, all Claims made in the Action shall be compromised, settled, released, and dismissed with prejudice, upon and subject to the foregoing and following conditions:

2. DEFINITIONS

Capitalized terms in this Stipulation shall have the meanings set forth below.

- (a) “Action” means the above-captioned matter.
- (b) “Allocation Schedule” means the schedule for the allocation of the Net Settlement Amount set forth in Exhibit 1 annexed hereto.
- (c) “Claim Form” means the claim form that must be submitted by all Settlement Class Members who wish to submit a claim for work performed for Attentive between February 28, 2010 and December 31, 2010.
- (d) “Claims” means any and all claims asserted in the Action, except that “Claims” in respect of any Settlement Class Member who fails to become an FLSA Claimant does not include claims for violations of the FLSA.
- (e) “Claims Administrator” means the firm of Simpluris, Inc. which shall administer the Settlement.
- (f) “Defendant Attentive” means Attentive Home Care Agency, Inc. d/b/a Always Home Care and all of its owners, managers, officers, directors, insurers, employees, subsidiaries, parents, and affiliates who would potentially be liable for any of the Claims.

- (g) “Defendants” shall mean Defendant Attentive and Individual Defendant.
- (h) “Defendants’ Counsel” means the law firm set forth on the signature page of this Stipulation as counsel for the Defendants.
- (i) “District Court” means the United States District Court for the Eastern District of New York.
- (j) “Effective Date” means the later of (1) thirty-three (33) days after entry of an order and final judgment by the Court granting final approval of this Settlement, if no appeal of such final approval is then pending, or (2) if an appeal of such final approval is then pending, the day after the order and final judgment is affirmed on appeal.
- (k) “Final Approval” means the date when the Order and Final Judgment has been entered approving this Stipulation and is no longer subject to judicial review.
- (l) “FLSA Claimant” means those Settlement Class Members who submit a FLSA Consent Form.
- (m) “FLSA Consent Form” means the consent form that must be submitted by all Settlement Class Members who wish to be bound by the terms of the settlement with respect to any FLSA claims that they may have in this lawsuit.
- (n) “Individual Defendant” means Yelena Pustilnik.
- (o) “Named Plaintiff” means Settlement Class Member Norbivi Nasimova.
- (p) “Notice” means the Official Notice of Settlement of Class Action, as approved by the District Court in all material respects in the form set forth as Exhibit 4 annexed hereto, and provided to all members of the Settlement Class via a website to be established by the Claims Administrator.

(q) “Notice Postcard” means the postcard providing notice of the Settlement, as approved by the District Court in all material respects in the form set forth as Exhibit 6 annexed hereto, and provided to all members of the Settlement Class by the Claims Administrator.

(r) “Order and Final Judgment” means the order to be entered approving this Stipulation in all material respects in the form set forth in Exhibit 3 annexed hereto.

(s) “Parties” means all the Settlement Class Members and Defendants; “Party” means either all of the Settlement Class Members or Defendants.

(t) “Plaintiffs’ Counsel” means the law firm set forth on the signature page of this Stipulation as counsel for the plaintiffs.

(u) “Preliminary Order” means the order to be entered in all material respects in the form set forth in Exhibit 2 annexed hereto.

(v) “Settlement” means the settlement of the Action contemplated by this Stipulation.

(w) “Settlement Class” and “Settlement Class Members” means, for the purposes of this Settlement, all persons who were employed by Defendants as home health aides between February 28, 2010 and October 31, 2019, attached hereto as Schedule A. Excluded from the Settlement Class are all persons who were employed by Defendants as home health aides between February 28, 2010 and October 31, 2019 and who request to be excluded from the Settlement Class in accordance with the requirements set forth in the Notice.

3. SCOPE AND EFFECT OF THE SETTLEMENT

The Parties have entered into this Stipulation in furtherance of their efforts to obtain a global settlement of all Claims on terms and conditions contained herein. The Parties agree that Final Approval is required to achieve the Settlement.

4. SETTLEMENT CLASS CERTIFICATION

The Parties stipulate, only for settlement purposes, to the certification of the Settlement Class and to the appointment of the Named Plaintiff as class representative, pursuant to Rule 23. If for any reason (including the exercise of a right to terminate under the Stipulation) Final Approval of the Settlement is not granted, then the certification of the Settlement Class and the appointment of the Named Plaintiff as class representative shall become null and void without further District Court action.

5. THE SETTLEMENT FUND

(a) Defendant Attentive shall pay \$550,000.00 (the “Settlement Amount”) as its full and complete settlement payment obligation under this Stipulation, including *inter alia*, (i) any and all claims alleged in the First Amended Complaint and all other wage-and-hour, recordkeeping, notice, pay statement, benefits-related wage parity, prevailing wage, and compensation-related claims that were or could have been alleged in the Action; (ii) any and all attorneys’ fees and litigation costs, including the \$65,000 fee of a Claims Administrator (“Administrator Fee”), and expenses incurred by Plaintiffs’ Counsel, including expenses incurred by Plaintiffs’ Counsel related to the application to the Court for approval of this Settlement; and (iii) any enhancement allocation made by the District Court to the Named Plaintiff for her assistance in the prosecution of the class claims. Defendant Attentive will not be required to pay more than the gross total of \$550,000.00 under the terms of this Stipulation. This payment shall be made to the Claims Administrator or into one or more escrow accounts maintained by the Claims Administrator for the benefit of the Settlement Class within 10 business days following entry of the Preliminary Order.

(b) The Settlement Amount (and any interest or income earned thereon after delivery to the Claims Administrator) shall be the “Gross Settlement Fund.” In the event that the Settlement does not receive Final Approval or does not otherwise become effective pursuant to the definition of Effective Date, any portion of the Settlement Amount previously paid by Defendants, together with any interest or income earned thereon, less any Taxes (as defined in below in subsection 5(f)) due with respect to this interest or income, and less costs of administration and notice (as described below in Section 7) actually incurred and paid or payable from the Settlement Amount, shall be returned to Defendants within 30 days of the date it is determined that the Settlement will not receive Final Approval.

(c) Except in the event of termination pursuant to this Stipulation, the Gross Settlement Fund, net of any Taxes (as defined below in subsection 5(f)) on the interest or income thereof, shall be used to pay (i) the costs of the Claims Administrator and costs related to the Settlement Fund (as described below in Section 7), (ii) the attorneys’ fees and expense allocations referred to in Section 12 hereof, and (iii) the enhancement allocation made by the District Court to the Named Plaintiff for her assistance in the prosecution of the class claims. The balance of the Gross Settlement Fund after the above payments shall be the “Net Settlement Fund.” Except in the event of termination pursuant to this Stipulation, the Net Settlement Fund shall be distributed to the Settlement Class Members as provided below in Section 8, in the plan of allocation described in the Notice, and in accordance with the Allocation Schedule set forth in Exhibit 1, annexed hereto.

(d) Any sums required to be held in escrow hereunder prior to the Effective Date shall be held in the name of the “Attentive Home Care Fund” by the Claims Administrator. All funds held by the Claims Administrator shall remain subject to the jurisdiction of the District

Court until such time as the funds shall be distributed or returned to Defendants pursuant to this Stipulation and/or further order of the District Court. Upon the deposit of any monies to the Gross Settlement Fund, Defendants shall bear no risk of loss, and moreover Defendants, Defendants' Counsel, Plaintiffs' Counsel, and the Named Plaintiff shall have no responsibility or liability whatsoever for the Gross Settlement Fund, or for any actions by the Claims Administrator with respect to the monies deposited. No distribution or payment from the Gross Settlement Fund shall be made unless specifically authorized by this Stipulation or pursuant to an order of the District Court; provided, however, that the Claims Administrator shall invest and reinvest any funds held in escrow in short term United States Treasury securities or bank accounts fully insured by the United States government, and shall collect and reinvest all interest or income accrued thereon.

(e) The Parties agree that the Gross Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1, and that the Claims Administrator, as administrator of the Gross Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Gross Settlement Fund and paying from the Gross Settlement Fund any taxes owed with respect to the Gross Settlement Fund. The Claims Administrator shall maintain all information concerning the funds it holds in escrow so as to enable it to prepare the Gross Settlement Fund's taxes, and the Claims Administrator shall pay from the Gross Settlement Fund any taxes it deems necessary, as administrator of the Gross Settlement Fund. The Parties agree that the Gross Settlement Fund shall be treated as a Qualified Settlement Fund from the earliest date possible, and agree to any relation-back election required to treat the Gross Settlement Fund as a Qualified Settlement Fund from the earliest date possible. Defendants, as "transferor" within the definition of Treasury

Regulation § 1.468B-1(d)(1), agree to provide on a timely basis to the Claims Administrator, as administrators of the Gross Settlement Fund, the statement described in Treasury Regulation § 1.468B-3(e).

(f) All taxes on the interest or income of the Gross Settlement Fund and expenses and costs incurred in connection with the taxation of the Gross Settlement Fund, including, without limitation, expenses of tax attorneys and accountants (collectively, “Taxes”) shall be paid out of the Gross Settlement Fund, shall be considered to be a cost of administration of the Settlement (as described in Section 7 hereof), and shall be timely paid without further order of the District Court. In the event that the Settlement does not receive Final Approval or otherwise does not become effective pursuant to the definition of Effective Date, and any part of the Settlement Amount previously paid by or on behalf of Defendants is returned to Defendants, then Defendants shall not be entitled to the return of any Taxes actually incurred and paid or payable from the Settlement Amount.

6. COOPERATION OF THE PARTIES

(a) Except to the extent otherwise provided in this Stipulation, the Parties agree to undertake their best efforts, including all steps contemplated by this Settlement, and any other steps and efforts that may be necessary or appropriate, by order of the District Court or otherwise, to obtain District Court approval of this Settlement and to carry out the terms thereof.

(b) Plaintiffs’ Counsel shall submit to the District Court a motion seeking entry of the Preliminary Order, which Defendant shall join, provided that Defendant’s Counsel have received a copy of the motion papers reasonably in advance of such filing and have advised Plaintiffs’ Counsel of Defendant’s consent thereto.

(c) Counsel shall request that the District Court authorize the form of Notice. The Parties shall propose a program and form of notice to the Settlement Class consistent with the goal of providing economical, efficacious, and expeditious notice consistent with the requirements of Rule 23 and due process.

(d) The Parties shall jointly seek entry of the Order and Final Judgment.

(e) The Parties agree to cooperate reasonably with one another in seeking District Court approval of the Preliminary Order, the Stipulation, and the Settlement, and to promptly agree upon and execute any documentation that may be reasonably required to obtain final approval by the District Court of the Settlement.

7. ADMINISTRATION OF THE SETTLEMENT

(a) The Claims Administrator shall administer the Settlement under the supervision and pursuant to the order of the District Court. The Claims Administrator shall be responsible for locating the Settlement Class Members, mailing the Notice Postcards to Settlement Class Members in accordance with the Preliminary Order; responding to Settlement Class Member inquiries; calculating Settlement Class Members' *pro rata* share of the Net Settlement Fund; reporting on the state of the Settlement to Defendants' Counsel and Plaintiffs' Counsel; distributing the individual payments to Settlement Class Members, the enhancement allocation, if approved by the District Court, to the Named Plaintiff, and the allocation of attorneys' fees and expenses, if approved by the District Court, to Plaintiffs' Counsel; calculating all payroll tax and withholding for each Settlement Class Members' share of taxes; remitting such withheld funds to the appropriate taxing authorities; preparing and filing appropriate tax reporting forms for such withheld funds; the claims administration process; coordinating collection and compilation of the Settlement Checks for filing with the District Court; providing copies of the Settlement Checks

to Defendants and Plaintiffs' Counsel; preparing a declaration regarding its due diligence in the claims administration process; and performing such other as specified in this Stipulation or that are ancillary or related to claims administration matters.

(b) Except for their obligation, if any, to make the payments under this Stipulation, Defendants, Defendants' Counsel, Plaintiffs' Counsel, and the Named Plaintiff shall have no responsibility for the administration, allocation, designation, or distribution of the Settlement or the Settlement Amount and shall have no liability whatsoever to the members of the Settlement Class in connection with the administration, allocation, designation, or distribution of the Settlement Fund. The Claims Administrator will provide regular reports to Plaintiffs' Counsel and Defendants' Counsel regarding the status of the mailing of the Notices to Settlement Class Members, the claims administration process, and the distribution of the Settlement Checks.

(c) Subject to Court approval, the Claims Administrator may pay from the Gross Settlement Fund, without further approval from Defendant the Administrator Fee paid for the reasonable costs and expenses associated with identifying members of the Settlement Class and effecting notice to the Settlement Class, and the administration of the Settlement, including, without limitation, the actual costs of printing, and mailing the Notice Postcard, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims. In the event that the Settlement does not receive Final Approval or does not otherwise become effective and the Settlement Amount previously paid by or on behalf of Defendants is returned to them, then Defendants shall not be entitled to the return of any costs of administration and notice actually incurred and paid or payable from the Settlement Amount.

(d) The Claims Administrator shall not be authorized to pay, and shall not pay, except as ordered by the District Court or as authorized in Section 7(b), any portion of the Settlement Amount—including payment of any such portion to itself in respect of fees or expenses—and the Claims Administrator shall maintain the Settlement Amount in escrow as provided for in this Stipulation, except as otherwise ordered by the District Court. Plaintiffs' Counsel shall have no authority to direct the Claims Administrator to make any payments from the Settlement Amount except as ordered by the District Court.

(e) The Claims Administrator shall determine each Settlement Class Member's *pro rata* share of the Net Settlement Fund in accordance with the Allocation Schedule set forth in Exhibit 1 annexed hereto and with the plan of allocation described in the Notice that is in all material respects in the form set forth in Exhibit 4 annexed hereto, or in the plan approved by the District Court if a plan different than Exhibit 4 is approved, including the Class Member Allocation Schedule.

(f) Each Settlement Class Member shall be allocated a *pro rata* share of the Net Settlement Fund in accordance with the Allocation Schedule and the plan of allocation described in the Notice. The entire Net Settlement Fund shall be distributed to the Settlement Class Members, and none shall revert to Defendants under any circumstances. Defendants, Defendants' Counsel, Plaintiffs' Counsel, and the Named Plaintiff shall have no involvement in or liability for considering, reviewing, challenging, accepting, rejecting, allocating, or determining claims.

8. NOTICE TO CLASS MEMBERS; COURT APPROVAL; OPT-OUTS; OBJECTIONS; ALLOCATION AND DISTRIBUTION OF NET SETTLEMENT FUND

(a) Within ten (10) days following the District Court’s Preliminary Order approving the Settlement, Defendant Attentive shall provide to the Claims Administrator for all Settlement Class Members employed by Defendant Attentive on or after January 1, 2012, the following information: name, Social Security Number, and last known address. Because Defendant Attentive was under different ownership in 2010 and 2011 and full employment records from that time period may no longer be available, Defendant Attentive will use available W-2 records to identify the name, Social Security Number, and last known address of Settlement Class Members who worked prior to 2012 to the extent reasonably practicable. All personally identifiable information regarding Settlement Class Members will be designated as “Confidential” pursuant to the September 15, 2016 Protective Order in this Action, but may be shared with the Claims Administrator solely for the purpose of Claims Administration in this Action.

(b) Within forty-five (45) days following the Preliminary Order, the Claims Administrator shall establish a website (the “Settlement Website”) providing information regarding the Settlement, including the Notice, FLSA Consent Form, Claim Form, and contact information for the Claims Administrator, to the Settlement Class. The Settlement Class Members will be able to submit the FLSA Consent Form, the Claim Form and IRS Form W-4 to the Claims Administrator via the Settlement Website. Also within forty-five (45) days following the Preliminary Order, the Claims Administrator Shall mail, via First Class United States mail, postage prepaid, to each Settlement Class Member, the Notice Postcard, using the information provided by Defendant Attentive.

(c) If any Notice Postcards are returned as undeliverable, the Claims Administrator will take reasonable steps to endeavor to ascertain a current address, and mail the Notice Postcard to a current address for each such Settlement Class Member.

(d) The Settlement Website will include a downloadable blank IRS Form W-4, to be completed and returned to Defendants' Counsel either electronically via the Settlement Website or via mail. Any such Settlement Class Member who fails to provide the Claims Administrator with a signed IRS Form W-4 shall be deemed to have elected one withholding exemption.

(e) The Claims Administrator also agrees to cause a notice about the settlement to be published in the legal notices section of one issue of amNY and Russian Bazaar in substantially the form attached as Exhibit 5 (which will be translated into Russian for purposes of publication in Russian Bazaar).

(f) Any Settlement Class Member may request exclusion from the Settlement Class by "opting out." Settlement Class Members who choose to do so must mail a written, signed, statement to the Claims Administrator that states he or she is opting out of the settlement, and include his or her name, job title, address, and telephone number and state, "I opt out of the Attentive wage and hour settlement." To be effective, such opt-out statement must be sent to the Claims Administrator via First Class United States Mail, postage prepaid, and must be postmarked by a date certain to be specified, which date will be forty-five (45) days after the Claims Administrator mails the Notice Postcard. The statute of limitations applicable to the individual claims of any Class Member who excludes him or herself from the Settlement (by opting out) will be tolled for the period that the claim was prosecuted in the Action.

(g) Settlement Class Members whose first mailing was returned to the Claims Administrator as undeliverable will be allowed to opt-out or object up to forty-five (45) days

from the date of the second mailing, but no later than ninety (90) days from the Preliminary Order. The Claims Administrator shall not attempt more than two (2) mailings of the Notice Postcard to any Settlement Class Member, and no mailing shall occur more than forty-five (45) days after the mailing to Class Members.

(h) The Claims Administrator shall keep accurate records of the dates on which it sends Notice Postcards to Settlement Class Members.

(i) The Claims Administrator will stamp the postmark date on the original of each opt-out statement that it receives and shall serve copies of each opt-out statement on Plaintiffs' Counsel and Defendants' Counsel no later than five (5) days after receipt thereof. The Claims Administrator will also, within five (5) days of the end of the opt-out period, file with the District Court, stamped copies of any opt-out statements. The Claims Administrator will, within twenty-four (24) hours of the end of the opt-out period, send a final list of all opt-out statements to Plaintiffs' Counsel and Defendants' Counsel by both email and overnight delivery. The Claims Administrator will retain the stamped originals of all opt-out statements and originals of all envelopes accompanying opt-out statements in its files until such time as the Claims Administrator is relieved of its duties and responsibilities under this Stipulation.

(j) Any Settlement Class Member who does not properly submit a timely opt-out statement pursuant to this Stipulation will be deemed to have accepted the Settlement and the terms of this Stipulation and will be eligible for payment hereunder. Any Settlement Class Member who opts out will not receive any payment of any amount.

(k) Any member of the Settlement Class who does not file a FLSA Consent Form will not be considered to be an "FLSA Claimant," except that a named plaintiff or a plaintiff who

has filed an FLSA Consent Form will only be considered to be an “FLSA Claimant” if he or she does not request to be excluded from the Settlement Class.

(l) Any Settlement Class Member who does not opt out of the Settlement and who wishes to present objections to the Settlement at the Fairness Hearing must first set them forth in a written statement and mail it to the Claims Administrator. Such written objection must be postmarked by a date certain to be specified on the Notice, which date will be forty-five (45) days after the Claims Administrator mails the Notice Postcard. The written objection must include: (1) the words, “I object to the Attentive wage-and-hour settlement”; (2) all reasons for the objection (any reasons not included in the written objection will not be considered) and (3) the name, job title, address, and telephone number for the Settlement Class Member making the objection. The Claims Administrator will stamp the date received on the original and send copies of each written objection to Plaintiffs’ Counsel and Defendants’ Counsel by email and overnight delivery no later than three (3) days after receipt thereof. The Claims Administrator will also file the date-stamped originals of any written objections with the District Court no later than fifteen (15) calendar days before the Fairness Hearing.

(m) An objector also has the right to appear at the Fairness Hearing either in person or through his or her counsel, if his or her written objection so states. An objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her written objection at the time he or she submits the written objection. An objector may withdraw his or her objections at any time. No Settlement Class Member may appear at the Fairness Hearing unless he or she filed a timely written objection that complies with the procedures required under this Stipulation. No Settlement Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her written objection. Any Settlement

Class Member who has submitted an opt-out statement may not submit objections to the settlement or speak at the Fairness Hearing.

(n) Plaintiffs' Counsel and/or Defendants' Counsel may file with the District Court a written response to any filed written objections no later than three (3) calendar days before the Fairness Hearing.

(o) The Claims Administrator shall process the FLSA Consent Forms and Claim Forms and, pursuant to the Allocation Schedule and the plan of allocation described in the Notice, shall distribute (i) the Net Settlement Fund to the Settlement Class Members, (ii) the enhancement allocation made by the District Court to the Named Plaintiff for her assistance in the prosecution of the class claims referred to in Section 13 hereof, and (iii) the payments of the attorneys' fees and expense allocations referred to in Section 12 hereof as directed by Plaintiffs' Counsel. Plaintiffs' Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Plaintiffs' Counsel deem to be formal or technical defects in any FLSA Consent Form or Claim Form submitted in the interests of achieving substantial justice, provided, however, that Plaintiffs' Counsel provides written notice to Defendants' Counsel of this proposed advice before Plaintiffs' Counsel gives it to the Claims Administrator, and that Plaintiffs' Counsel allows Defendants' Counsel a reasonable opportunity to object to this proposed advice before the Claims Administrator acts upon it. Defendants' Counsel and Plaintiffs' Counsel will agree on a final spreadsheet calculating the final allocation to the Net Settlement Fund, which will be provided to and followed by the Administrator.

(p) For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an FLSA Claimant, the following conditions shall apply:

(i) Each Settlement Class Member shall be required to submit a FLSA Consent Form in the form attached to the Notice and/or Notice Postcard (see attached Exhibits 4 & 6);

(ii) All FLSA Consent Forms must be submitted by the date specified in the Notice, unless such period is extended by order of the District Court or waived pursuant to subsection (o). An FLSA Consent Form shall be deemed to have been timely submitted if received by the Claims Administrator with a postmark dated by the last date provided for receipt of such claims, if the FLSA Consent Form is actually received by the Claims Administrator within ten (10) days after such postmark. In all other cases, the FLSA Consent Form shall be deemed to have been submitted when actually received by the Claims Administrator;

(iii) Each FLSA Consent Form shall be submitted to and reviewed by the Claims Administrator, who shall determine, in accordance with this Stipulation and the approved plan of allocation, the extent, if any, to which each claim shall be allowed. The Claims Administrator shall advise Counsel for both parties of all claims for which the Claims Administrator believes grounds may exist for rejection, and shall give the Parties' Counsel the opportunity to offer an opinion on the decision that the Claims Administrator should make as to such claims. The Claims Administrator shall exercise sole and final authority to accept or reject all claims, and no review of such determinations is provided for in this Stipulation, absent a further order of the District Court;

(iv) FLSA Consent Forms that do not meet the submission requirements may be rejected. Prior to rejection of an FLSA Consent Form, the Claims Administrator shall communicate with the claimant to attempt to remedy the curable deficiencies in the FLSA Consent Form submitted. The Claims Administrator shall notify, in a timely fashion and in

writing, each claimant whose FLSA Consent Form it proposes to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice what steps, if any, the claimant can take to cure such rejection; and

(v) If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the mailing of the notice required in subparagraph (iv), file with the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation. The Claims Administrator shall advise the claimant in writing within twenty (20) days thereafter of any modification of the Claims Administrator's initial rejection or of the Claims Administrator's decision to uphold the rejection. The Claims Administrator shall have no further obligation to reconsider or modify its acceptance or rejection of the claim.

(q) Each FLSA Claimant shall be deemed to have submitted to the jurisdiction of the District Court with respect to all of the claims contained in the Complaint. Each remaining Settlement Class Member shall be deemed to have submitted to the jurisdiction of the District Court with respect to all Claims other than the FLSA claims contained in the Complaint.

(r) For purposes of determining the extent, if any, to which an individual who worked for Attentive solely during the time period of February 28, 2010 through December 31, 2010 shall be entitled to be treated as a Settlement Class Member:

(i) Each individual shall be required to submit a Claim Form in the form attached to the Notice (see attached Exhibit 4);

(ii) All Claim Forms must be submitted by the date specified in the Notice, unless such period is extended by order of the District Court or waived pursuant to subsection (o). A Claim Form shall be deemed to have been timely submitted if received by the Claims

Administrator with a postmark dated by the last date provided for receipt of such claims, if the Claim Form is actually received by the Claims Administrator within ten (10) days after such postmark. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

(iii) Each Claim Form shall be submitted to and reviewed by the Claims Administrator, who shall determine in accordance with this Stipulation and the approved plan of allocation the extent, if any, to which each claim shall be allowed. The Claims Administrator shall advise Counsel for both parties of all claims for which the Claims Administrator believes grounds may exist for rejection, and shall give the Parties' Counsel the opportunity to offer an opinion on the decision that the Claims Administrator should make as to such claims. The Claims Administrator shall exercise sole and final authority to accept or reject all claims, and no review of such determinations is provided for in this Stipulation, absent a further order of the District Court;

(iv) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejection of a Claim Form, the Claims Administrator shall communicate with the claimant to attempt to remedy the curable deficiencies in the Claim Form submitted. The Claims Administrator shall notify, in a timely fashion and in writing, each claimant whose Claim Form it proposes to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice what steps, if any, the claimant can take to cure such rejection; and

(v) If any claimant whose claim has been rejected in whole or in part desires to contest such rejection, the claimant must, within twenty (20) days after the mailing of the notice required in subparagraph (iv), file with the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting

documentation. The Claims Administrator shall advise the claimant in writing within twenty (20) days thereafter of any modification of the Claims Administrator's initial rejection or of the Claims Administrator's decision to uphold the rejection. The Claims Administrator shall have no further obligation to reconsider or modify its acceptance or rejection of the claim.

(s) Payment pursuant to this Settlement and/or the Order and Final Judgment shall be deemed final and conclusive against all Settlement Class Members.

(t) All proceedings with respect to the administration, processing, and determination of claims, and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to a Settlement Class Member's right to recover funds as a result of the Claims contained in the Complaint, shall be subject to the exclusive jurisdiction of the District Court.

(u) The Net Settlement Fund shall be distributed to Settlement Class Members by the Claims Administrator only after the Effective Date and after: (i) all timely FLSA Consent Forms and Claim Forms have been processed, and all claimants whose claims have been rejected, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all requests that the District Court has agreed to consider concerning objections raised by Settlement Class Members have been resolved, and all appeals therefrom have been resolved or the time therefor has expired, or a reserve has been established to cover the potential payment to these claimants; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the District Court, all appeals therefrom have been resolved or the time therefor has expired, or a reserve has been established to cover the potential attorneys' fees, costs, and disbursements; (iv) all costs of notice and administration (as described in subsection (b) have been paid or provided for; and (v) the enhancement allocation

made by the District Court to the Named Plaintiff for assistance in the prosecution of the class claims has been paid or provided for.

(v) All funds distributed by the Claims Administrator to Settlement Class Members shall be by check that is valid for one hundred eighty (180) days. The Claims Administrator shall advise, by mail, each Settlement Class Member whose check has remained un-cashed for one hundred eighty (180) days that the Settlement Class Member may contact the Claims Administrator within sixty (60) days to request that the check be re-issued. A Settlement Class Member who contacts the Claims Administrator within sixty (60) days of the mailing of this notice will receive a reissued check that will be valid for sixty (60) days from its issue date. After the expiration date of any reissued check, or sixty (60) days after the mailing regarding the option to receive a reissued check for any check for which the Settlement Class Member did not contact the Claims Administrator to request a reissued check, the funds associated with these uncashed checks shall be donated to the American Red Cross and the Settlement Class Member to whom such checks were issued shall be deemed to have forfeited such payments. Any funds that remain in the Settlement Fund following this period, and following the payment of all expenses and fees allowed under this Agreement, shall also be donated to the American Red Cross at this time.

9. RELEASE

(a) Upon the Effective Date and thereafter, all Settlement Class Members, on behalf of themselves, their heirs, executors, administrators, successors, and assigns, shall, pursuant to the Order and Final Judgment, be deemed to have – from the beginning of the world to the day of the date of this Stipulation – released and forever discharged, and shall forever be enjoined from filing, commencing, prosecuting, intervening in, or participating in, any and all Claims against

Defendants, including, *inter alia* (i) any and all claims, causes of action, obligations, damages, liabilities, and expenses (inclusive of attorneys' fees and costs) of any kind arising under the FLSA, the NYLL, the Minimum Wage Order for Miscellaneous Industries and Occupations, 12 N.Y.C.R.R. Part 152, and all claims for breach of any contract (including third-party beneficiary claims) relating to compensation or benefits covered under N.Y. Public Health Law § 3614-c or N.Y.C Admin. Code § 6-109; or (ii) arising under any federal, New York, or local wage-and-hour or compensation-related laws. Without limitation, the release referred to in this subsection includes all claims relating to minimum wages, overtime compensation, regular wages, spread-of-hours pay, training time pay, wage parity, employee benefits, supplemental wages, wage notice, pay statement, record-keeping violations, liquidated damages, interest, attorneys' fees or costs, or other wages or similar amounts, whether pursuant to any written or oral contract, promise, or other understanding, including any claims asserted as an alleged third-party beneficiary of any contract, or pursuant to any federal, state, or local rule, regulation, or law, including, *inter alia*, any claim arising under the FLSA, NYLL, N.Y. Public Health Law § 3614-c, 12 N.Y.C.C.R. Part 142, and N.Y. C. Admin. Code § 6-109. Also without limitation, the release referred to in this subsection includes all claims asserted or purported to be asserted on behalf of the Settlement Class Members in *Wallace v. Attentive Home Care Agency, Inc. d/b/a Always Home Care*, 157441/2017 (N.Y. Cty. Sup. Ct.) and *Prawdzik v. Attentive Home Care Agency, Inc. d/b/a Always Home Care, et al.*, 19-cv-04931 (E.D.N.Y.), to the extent they do not exclude themselves from the Class pursuant to the terms of this Stipulation. The release and injunction referred to in this subsection shall bar all Settlement Class Members from filing, commencing, or prosecuting any and all Claims, to the fullest extent permitted by law. The release in this Stipulation does not release any claims for discrimination.

(b) All Settlement Class Members shall, pursuant to the Order and Final Judgment, be deemed to have covenanted not to sue the Defendant or to prosecute any action against the Defendant with respect to any Claims, to the fullest extent permitted by law.

(c) Except as provided in this Stipulation, Plaintiffs' Counsel and the Named Plaintiff, on behalf of the Settlement Class and each Settlement Class Member, hereby forever and finally release and discharge any claim that he, she or they may have against Defendants for attorneys' fees or litigation expenses or costs associated with Plaintiffs' Counsel's representation of Named Plaintiff and the Settlement Class. Plaintiffs' Counsel further understands and agrees that any attorneys' fees and litigation expenses or costs approved by the District Court, will be the full, final, and complete payment of all attorneys' fees and costs associated with Plaintiffs' Counsel's representation in this Action.

(d) In addition to the foregoing release provisions, amounts paid to each Settlement Class Member shall be deemed full satisfaction of such Settlement Class Member's Released Claims, regardless of the amount attributed to any particular claim under the allocation formula set forth herein.

10. EFFECTUATING THE SETTLEMENT

The Parties agree to submit for the District Court's approval the Order and Final Judgment in all material respects in the form set forth in Exhibit 3 annexed hereto, including the bar order referred to therein, providing for discharge, protection, and judgment reduction to the fullest extent permitted by law.

11. TERMINATION

(a) Plaintiffs' Counsel and Defendant shall each have the right to terminate this Settlement by providing written notice of their election to do so to the parties identified in Section 14(b) hereof within thirty (30) days following: (i) the District Court's rejection or denial, in whole or in material part, of any motion or application necessary for the Effective Date to occur, including any refusal to approve this Settlement, to enter the Preliminary Order in all material respects in the form annexed hereto as Exhibit 2, or to enter an Order and Final Judgment in all material respects in the form annexed hereto as Exhibit 3; or (ii) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Second Circuit or the United States Supreme Court.

(b) If either (i) fifty (50) or more Settlement Class Members; or (ii) any number of Settlement Class Members whose cumulative settlement recovery amounts Defendants reasonably value at \$100,000.00 or more, timely opt out of the Settlement Class as provided in this Stipulation, Defendants may, but are not obligated to, terminate this Agreement, but such termination is only permitted if exercised by giving written notice to the District Court and Plaintiffs' Counsel on or before the date ten (10) days after the opt-out deadline and then subsequently giving notice to the Settlement Class.

(c) In the event that this Settlement is terminated, the Stipulation and any related orders shall be null and void, and of no further force and effect; the Settlement shall not be deemed an admission by any Party, and shall not be admissible for any purpose, and shall not be introduced as evidence or referred to in any proceeding other than a proceeding to enforce the terms of this Stipulation, and each Party shall be restored to his, her, or its respective position as it existed prior to the execution of this Stipulation; and any portion of the Settlement Amount previously paid by or on behalf of the Defendants, together with any interest or income earned

thereon, less any Taxes paid or due with respect to this interest or income, and less costs of administration and notice (as described in Section 7 hereof) actually incurred and paid or payable from the Settlement Amount, shall be returned within 30 days of termination to Defendant.

12. ATTORNEYS' FEES AND EXPENSES

(a) On or after the Effective Date, no distributions to the Class will occur until after any dispute or appeal regarding Plaintiff's attorneys' legal fees and expenses has been fully resolved and decided and the time for any appeal or further objection has expired.

(b) Notwithstanding anything contained herein to the contrary, the procedure for and the allowance or disallowance (in whole or in part) of any application by Plaintiffs' Counsel for attorneys' fees and expenses are to be considered by the District Court separately and apart from the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating exclusively to the allocation of attorneys' fees and expenses, or any appeal of any order relating thereto, shall not operate to terminate or cancel this Stipulation or be deemed material thereto or affect the finality of the Order and Final Judgment approving the Stipulation and the Settlement, or any other orders entered pursuant to this Stipulation.

(c) Plaintiffs' Counsel shall apply to the District Court for an allocation from the Settlement Amount of attorneys' fees and expenses not to exceed \$75,000.00. Defendants shall not oppose this application. Any attorneys' fees and expenses not approved by the District Court will become part of the Net Settlement Fund. The attorneys' fees and expenses will not be paid in the event this Stipulation is terminated according to its terms.

(d) All attorneys' fees and expenses approved by the District Court shall be paid without withholding and reported to the IRS on Form 1099 as appropriate.

13. ENHANCEMENT ALLOCATION

(a) Plaintiffs' Counsel shall seek approval for an enhancement allocation not to exceed \$15,000.00 for services Named Plaintiff rendered on behalf of the Settlement Class Members. Defendants shall take no position with respect to, and shall not object to, this request.

(b) The substance of the above-referenced Named Plaintiff's application for an enhancement allocation is not part of this Stipulation and is to be considered separately from the District Court's consideration of the fairness, reasonableness, adequacy, and good faith of the Settlement of this Action. The outcome of the District Court's ruling on the application for the enhancement allocation shall not terminate this Agreement or otherwise affect the District Court's ruling on the Motion for Judgment and Final Approval. Any enhancement allocation not approved by the District Court will become part of the Net Settlement Fund. The enhancement allocation will not be paid in the event this Stipulation is terminated according to its terms.

(c) The enhancement allocation will be less applicable withholdings, and the Named Plaintiff will receive an IRS Form W-2 for the enhancement allocation.

14. CONDITIONS

The Settlement of the Action contemplated by this Stipulation shall be conditioned upon entry of the Order and Final Judgment substantially in the form attached hereto as Exhibit 3 and the occurrence of the Effective Date.

15. MISCELLANEOUS

(a) Final Resolution – The Parties intend the Settlement as a final and complete resolution of all Claims. The Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated intensively, at arm's length, and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

(b) Notice – All notices permitted or required pursuant to this Stipulation shall be in writing and shall be given by personal delivery, overnight express, or facsimile to all of the following Persons:

For Plaintiffs: **LAW OFFICE OF WILLIAM COUDERT RAND**
William Coudert Rand, Esq.
501 Fifth Avenue, 15th Floor
New York, New York 10017
Tel (212) 286-1425

For Defendants: **PATTERSON BELKNAP WEBB & TYLER LLP**
Daniel S. Ruzumna, Esq.
1133 Avenue of the Americas
New York, New York 10036-6710
Tel (212) 336-2034

(c) Effect of Waiver of Breach – The waiver by one Party of any breach of this Stipulation by the other Party (except for breach of the obligation to fund the Settlement Fund) shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation. Unless otherwise stated herein, any non-material breach of any provision of this Stipulation by any Party hereto shall not constitute grounds for rescission of this Stipulation, but shall constitute grounds only for a claim of specific performance or damages for breach of this Stipulation.

(d) Authority – Plaintiffs' Counsel agrees to the terms of the Settlement respecting his rights and obligations under the same, and warrants and represents that he is bound by its terms.

(e) Counterparts – This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

(f) Successors and Assigns – This Stipulation shall be binding upon, and inure to the

benefit of, the Parties, and their respective agents, heirs, executors, successors, assigns, trustees, and legal administrators.

(g) Headings – The headings herein are used for the purpose of convenience only and are not meant to have a legal effect.

(h) Modification – This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by or on behalf of all Parties hereto or their successors-in-interest, and approved by the District Court where necessary.

(i) Integrated Agreement – This Stipulation and the exhibits hereto constitute the entire agreement between the Parties hereto concerning the settlement of the Action, and no representations, warranties, or inducements have been made to the Settlement Class concerning this Stipulation and its exhibits other than those contained and memorialized in those documents.

(j) No Prevailing Party – This Stipulation takes no position as to whether any Party shall be considered a prevailing party in the Action for any purpose except for the purpose of justifying the attorneys' fees agreed to be paid in this stipulation. Except as otherwise provided for in this Stipulation, the Parties shall bear their own attorneys' fees, expenses, and costs.

(k) Choice of Law – The construction, interpretation, operation, effect, and validity of this Stipulation, and all documents necessary to effectuate it, including any supplemental agreements, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law governs. Any action or proceeding to enforce the Settlement shall, pursuant to the District Court's retention of jurisdiction with respect to the Settlement, be brought in the District Court.

(l) Joint Drafting – This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been proposed

by Plaintiffs' Counsel or Defendant's Counsel, it being recognized that all Parties have contributed substantially and materially to the preparation of this Stipulation.

(m) Retention of Jurisdiction – Unless otherwise provided herein, the administration and consummation of the Settlement shall be under the authority of the District Court and the District Court shall retain jurisdiction for the purpose of entering orders providing for (i) the distribution of the Gross Settlement Fund and the Net Settlement Fund, (ii) allocations of attorneys' fees and expenses to Plaintiffs' Counsel as contemplated by Section 12 hereof, and (iii) implementing and enforcing the terms of this Stipulation, the releases provided pursuant to Section 9 hereof, and any orders or judgments issued pursuant thereto or in connection therewith.

(n) Compliance with Class Action Fairness Act – Within 10 days following the Court's entry of the Preliminary Approval Order Defendant's Counsel shall serve notice of the proposed Settlement upon the appropriate state and federal officials as specified in 28 U.S.C. § 1715.

(o) Press Inquiries – The Parties agree that they will respond to any press inquiries with the response that “the parties have resolved their differences to their mutual satisfaction” or words to that effect. The Named Plaintiff, Plaintiffs' Counsel, and Defendants' Counsel shall issue no press release regarding this Stipulation or the Settlement and shall make no statements regarding this Stipulation or the Settlement on the internet, websites, or social media for a period of six (6) months following final approval of the Settlement.

EXECUTED AND AGREED:

DATED AS OF: January 31, 2020

PLAINTIFF

NORBIVI NASIMOVA

DATE: _____

DEFENDANTS

**ATTENTIVE HOME CARE AGENCY INC.
d/b/a ALWAYS HOME CARE**

DATE: _____

YELENA PUSTILNIK

DATE: _____

Exhibit “1”

Allocation of Settlement Funds and List of Minimum Settlement Amount To be Paid Each Settlement Class Member

The Claims Administrator will divide the Net Settlement Amount among five claims:

1. 20% of the Net Settlement Amount will be allocated to the claims related to the loss of the federal companionship exemption under the FLSA (the “First Claim Allocation”);
2. 8% of the Net Settlement Amount will be allocated to the claims related to the alleged unpaid hours for 24-hour, or “live-in,” shifts from January 1, 2011 to October 31, 2019 (the “Second Claim Allocation”);
3. 18.5% of the Net Settlement Amount will be allocated to the claims for unpaid spread-of-hours wages from January 1, 2011 to October 31, 2019 (the “Third Claim Allocation”);
4. 35% of the Net Settlement Amount will be allocated to the claims for other unpaid wages, including minimum wage, training time, Wage Parity Act wages and prevailing wages under the N.Y.C. Admin Code § 6-109 from January 1, 2011 to October 31, 2019 (the “Fourth Claim Allocation”);
5. 16.5% of the Net Settlement Amount will be allocated to the claims related to the alleged failure to provide Wage Theft Protection Act-compliant new-hire notices and pay statements from April 9, 2011 to October 31, 2018 (the “Fifth Claim Allocation”);
6. 2% of the Net Settlement Amount will be allocated to the claims related to unpaid wages and the alleged failure to provide Wage Theft Prevention Act compliant notices and pay statements to individuals who worked for Attentive solely during the Period of February 28, 2010 to December 31, 2010 (the “Sixth Claim Allocation”). If total distributions with respect to the Sixth Claim Allocation are less than 2% of the Net Settlement Amount, the difference between the total distributions with respect to the Sixth Claim Allocation and 2% of the Net Settlement Amount will be treated as part of the amount available to be distributed under the Fifth Claim Allocation (the “Sixth Claim Allocation”).

The Claims Administrator will then determine each Settlement Class Member’s share, if any, of the First Claim Allocation, Second Claim Allocation, Third Claim Allocation, Fourth Claim Allocation, Fifth Claim Allocation, and/or Sixth Claim Allocation as follows:

1. Each Settlement Class Member’s share of the First Claim Allocation, if any, will be determined by dividing the total number of overtime hours the Settlement Class Member worked as a home health aide for Attentive from January 1, 2015 through October 13, 2015, by the total number of overtime hours all Settlement Class Members worked as home health aides for Attentive from January 1, 2015 through October 13, 2015, and then multiplying this quotient by the amount of the First Claim Allocation (the result being the “First Claim Share”);

2. Each Settlement Class Member's share of the Second Claim Allocation, if any, will be determined by dividing the total number of "live-in" shifts worked by the Settlement Class Member as a home health aide for Attentive from January 1, 2011 through October 31, 2019 (the "Relevant Period"), by the total number of "live-in" shifts worked by all Settlement Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Second Claim Allocation (the result being the "Second Claim Share");
3. Each Settlement Class Member's share of the Third Claim Allocation, if any, will be determined by dividing the total number of hours worked by the Settlement Class Member as a home health aide for Attentive during the Relevant Period, by the total number of hours worked by all Settlement Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Third Claim Allocation (the result being the "Third Claim Share"). The number of hours worked by the Settlement Class Member as a home health aide for Attentive between January 1, 2017 and December 31, 2018 shall counted twice for the purposes of this calculation;
4. Each Settlement Class Member's share of the Fourth Claim Allocation, if any, will be determined by dividing the total number of hours worked by the Settlement Class Member as a home health aide for Attentive during the Relevant Period, by the total number of hours worked by all Settlement Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Fourth Claim Allocation (the result being the "Fourth Claim Share");
5. Each Settlement Class Member's share of the Fifth Claim Allocation, if any, will be determined by dividing the total number of "live-in" shifts worked by the Settlement Class Member as a home health aide for Attentive during the Relevant Period, by the total number of "live-in" shifts worked by all Settlement Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Fifth Claim Allocation (the result being the "Fifth Claim Share"); and
6. Each Settlement Class Member's share of the Sixth Claim Allocation, if any, will be the lesser of (i) the amount determined by dividing the Sixth Claim Allocation evenly among all Settlement Class Members who submit a Claim Form that is accepted by the Claims Administrator; and (ii) \$50.00.

The Claims Administrator will then determine each Settlement Class Member's "Percentage Allocation Number" by (a) summing that Settlement Class Member's First Claim Share, Second Claim Share, Third Claim Share, Fourth Claim Share, Fifth Claim Share, and Sixth Claim Share (if any), (b) summing all Settlement Class Members' First Claim Shares, Second Claim Shares, Third Claim Shares, Fourth Claim Shares, Fifth Claim Shares, and Sixth Claim Shares and (c) dividing the sum calculated in clause (a) by the sum calculated in clause (b). Each Settlement Class Member's Percentage Allocation Number will be expressed as a percentage.

Exhibit “2”
[Proposed Order Preliminarily Approving Class Settlement]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
NORBIVI NASIMOVA, individually and on behalf of
all others similarly situated,

Plaintiff, : **ECF**
: 16 Civ. 01005 (SJ)(PK)

-against-

ATTENTIVE HOME CARE AGENCY INC. d/b/a
ALWAYS HOME CARE, ALWAYS HOME CARE
AGENCY INC., YELENA PUSTILNIK and JOHN
DOES #1-10,

Defendants.

----- x

**ORDER PRELIMINARILY APPROVING
CLASS AND COLLECTIVE ACTION SETTLEMENT AND
PROVIDING FOR NOTICE OF FAIRNESS HEARING**

WHEREAS, the class and collective action, *Norbivi Nasimova v. Attentive Home Care Agency, Inc. d/b/a/ Always Home Care., et al.*, Civil Action Number 16 Civ. 01005 (“Lawsuit”), is currently pending before this Court;

WHEREAS, the parties have made an application, pursuant to Federal Rules of Civil Procedure 23(e) and (g) for an order approving settlement of the claims alleged in the Lawsuit on a class basis (the “Settlement”) and appointing class counsel in accordance with a Settlement Agreement entered into as of January 31, 2020 (the “Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the Lawsuit against Defendants and for dismissal of the Lawsuit against Defendants with prejudice upon the terms and conditions set forth therein, and the Court has read and considered the Agreement, the exhibits annexed thereto, and the parties’ joint motion for approval; and

WHEREAS, all capitalized terms contained and not otherwise defined herein shall have the same meanings set forth in the Agreement.

**IT IS ON THIS _____ DAY OF _____, 2020, HEREBY ORDERED AS
FOLLOWS:**

1. The Court hereby preliminarily approves the Settlement set forth in the Agreement as being fair, just, and reasonable.

2. For purposes of the Settlement, the Court hereby preliminarily certifies the class as defined in the Agreement (hereinafter, the “Class”); namely, all individuals who were employed by Defendant Attentive Home Care Agency, Inc. d/b/a Always Home Care (“Attentive”) as home health aides between February 28, 2010 and October 31, 2019. The Court finds, for settlement purposes, that the Class meets all of the requirements of Federal Rule of Civil Procedure 23.

3. The Court appoints Named Plaintiff Norbivi Nasimova as representative of the Class and appoints as Class Counsel William C. Rand and the Law Office of William Coudert Rand and approves the use of _____ as the Claims Administrator.

4. The Agreement falls within the range of reasonableness and appears to be presumptively valid, subject only to the objections that may be raised at the final Fairness Hearing.

5. The Court approves, as to form and content, the Notice of Settlement attached as Exhibit 4 to the Agreement under Federal Rules of Civil Procedure 23(c) and (e), and finds that the mailing and distribution of the Notice substantially in the manner and form set forth in the Agreement constitutes the best notice practicable under the circumstances, and constitutes valid, due, and sufficient notice to all persons in the Class, complying fully with the

requirements of Federal Rule of Civil Procedure 23, the Fair Labor Standards Act (the “FLSA”), the Constitution of the United States, and any other applicable laws.

6. A Fairness Hearing shall be held before this Court on _____, 2020, [not less than 90 days from the Class Action Fairness Act, (“CAFA”), 28 U.S.C. § 1715(b) notice mailing date] at the United States District Court, Eastern District of New York, U.S. Courthouse, 225 Cadman Plaza East, Brooklyn, N.Y. 11201, to determine finally whether the proposed settlement of the Lawsuit on the terms and conditions provided for in the Agreement is fair, just, reasonable, adequate, and in the best interest of the Class, and should be approved by the Court; and whether entry of Judgment and Final Approval, as provided in the Agreement, should be entered.

7. Class Counsel, along with the Claims Administrator, are hereby authorized to supervise and administer the notice procedure as more fully set forth below:

A. On or before _____ [10 days from this Order], Attentive shall provide the Claims Administrator and Class Counsel the following information for all Class Members: name, social security number, and last known addresses, as that information exists on file with Attentive (the “Class Contact List.”).

B. On or before forty-five (45) days from this Order (the “Notice Date”), the Claims Administrator shall cause to be mailed, by first-class mail, a copy of the Notice of Settlement, substantially in the form annexed as Exhibit 4 to the Agreement, to all putative Class and Collective Action Members who can be identified or located with reasonable effort.

C. Class Members shall have forty-five (45) days from the date that the Notice is mailed to opt-out of the settlement by mailing an Opt-Out Statement to the Claims Administrator, containing the information required by the Agreement.

D. Class Members shall have forty-five (45) days from the date that the notice is mailed to mail a Written Objection to the Claims Administrator, containing the information required by the Agreement. Any statement of position or objection shall state the objector's name, address, and telephone number and dates of employment with Attentive and whether the objector intends to speak at the Fairness Hearing. Any member of the Class who does not make his or her objection in the manner provided in the Agreement shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Agreement, the releases provide for in the Agreement, the award of attorneys' fees, costs, and expenses to Class Counsel, and the award of an incentive payment for the Named Plaintiff, unless otherwise ordered by the Court.

E. Class Counsel and Defense Counsel shall file a Joint Motion for Judgment and Final Approval of the Settlement and the Agreement no later than fourteen (14) days before the Fairness Hearing.

F. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to the Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. Notice of any adjournment can be obtained from Class Counsel: William C. Rand, Esq., Law Office of William Coudert Rand, 501 Fifth Ave., 15th Floor, New York, New York 10017 (phone #212-286-1425) (fax #646-688-3078). The Court may approve the settlement, with such modifications as may be agreed to by Class Counsel and Defense Counsel, if appropriate, without further notice to the Class.

SO ORDERED

United States District Judge

Dated: _____, 2020

Exhibit “3”

Form of Order providing Final Approval of Settlement

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
:
NORBIVI NASIMOVA, individually and on behalf of :
all others similarly situated, :
: Plaintiff, : **ECF**
: : 16 Civ. 01005 (SJ)(PK)
: -against- :
: :
ATTENTIVE HOME CARE AGENCY INC. d/b/a :
ALWAYS HOME CARE, ALWAYS HOME CARE :
AGENCY INC., YELENA PUSTILNIK and JOHN :
DOES #1-10, :
: Defendants. :
----- x

**[PROPOSED] ORDER AND FINAL JUDGMENT: (1) CONFIRMING
CERTIFICATION OF CLASS; (2) GRANTING FINAL APPROVAL OF CLASS AND
COLLECTIVE ACTION SETTLEMENT; AND (3) ENTERING FINAL JUDGMENT
DISMISSING THE ACTION WITH PREJUDICE**

This matter came on for hearing upon the Court’s Order of _____, 2020 following preliminary approval of the Settlement in this action (“Preliminary Approval Order”). Due and adequate notice having been given to the Class (as defined below), and the Court having considered all papers filed and proceedings had herein and all oral and written comments received regarding the proposed Settlement, and having reviewed the record in the above captioned matter, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- a. Except as otherwise specified herein, the Court adopts all defined terms set forth in the parties’ Settlement Agreement, entered into as of January 31, 2020 (the “Agreement”).

- b. The Court has jurisdiction over the subject matter of the above-captioned matter, the Named Plaintiff, Defendants ATTENTIVE HOME CARE AGENCY, INC. d/b/a ALWAYS HOME CARE and YELENA PUSTILNIK (collectively, "Defendants") and all members of the Class, which consists of all individuals employed by Attentive as home health aides from February 28, 2010 through October 31, 2019, excluding those persons who validly excluded themselves from the class.
- c. If, for any reason, this Agreement does not become Effective, the parties shall return to their respective positions in the Action as those positions existed immediately before execution of the Agreement.
- d. The Court finds that the distribution by first-class mail of the Notice of Settlement and newspaper publication constituted the best notice practicable and fully met the requirements of due process under the United States Constitution, applicable state law, Federal Rule of Civil Procedure 23, and the Fair Labor Standards Act Based on evidence and other material submitted in conjunction with the Fairness Hearing, the actual notice to Class was adequate. These papers informed class members of the terms of the Settlement, their right to object to the Settlement, or to elect not to participate in the Settlement and pursue their own remedies, and their right to appear at the Fairness Hearing and be heard regarding approval of the Settlement. Adequate periods of time were provided by each of these procedures. No Class Members objected to the Settlement and no Class Members have validly requested exclusion. **[To be modified as necessary]**

- e. The Court finds, for purposes of settlement only, that the class satisfies the applicable standards for certification under Federal Rules of Civil Procedure 23. Accordingly, solely for purposes of effectuating this Settlement, this Court has certified the Class, as that term is defined above. Because the Rule 23 class is being certified here for settlement purposes only, the Court need not (and does not) address the manageability requirement of Rule 23(b)(3). *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997).
- f. The Court approves the Settlement, and each of the releases and other terms set forth in the Agreement, as fair, just, reasonable, and adequate as to the Class, the Named Plaintiff, and Defendants (collectively “Settling Parties”) under all applicable law, including but not limited to, Federal Rule of Civil Procedure 23 the Fair Labor Standards Act, and the New York Labor Law. The Settling Parties and the Settlement Administrator are directed to perform in accordance with the terms set forth in the Agreement.
- g. The Court finds that the plan of allocation set forth in the Agreement is fair and reasonable and that distribution of the Net Settlement Fund Settlement to Class Members shall be done in accordance with the terms outlined in the Agreement.
- h. The Court hereby confirms its order appointing NORBIVI NASIMOVA as Class Representative for the Class for purposes of settlement.
- i. The Court hereby confirms its order appointing William C. Rand and the Law Office of William Coudert Rand as Class Counsel for the Class for purposes of Settlement and the releases and other obligations therein.

- j. Attentive has agreed to pay to Class Counsel his reasonable attorneys' fees and expenses in the amount of \$75,000.00 and a Service Award the Class Representative in the amount of \$15,000.00. Accordingly, the Court hereby awards to Class Counsel \$75,000.00 for attorneys' fees and expenses. The Service Award to the Class Representative is approved for her service to the Class, including her time being deposed and her direct participation in Class Counsels' fact investigation and the settlement negotiations and the mediation. Defendants are directed to make all of the foregoing payments to Class Counsel and the Class Representative and the Class Members in accordance with the terms of the Agreement. Defendants shall not be required to make any additional payments in connection with the Settlement.
- k. By operation of entry of this Order and Final Judgment, all Released Claims are fully, finally, and forever released, relinquished, and discharged pursuant to the terms of the Agreement as to all Class Members, except those who have timely and validly opted-out or to whom Defendants have granted an exclusion. The Court permanently enjoins all Class Members from pursuing and/or seeking to reopen claims that have been released by this Agreement, except those Class Members who have timely and validly opted-out or to whom Defendants have granted an exclusion.
- l. The Defendants entered into this Agreement solely for the purpose of compromising and settling disputed claims. Defendants in no way admit any liability, and all liability is expressly denied.

- m. This action is hereby dismissed on the merits and with prejudice. The action is closed. The Court retains exclusive jurisdiction, to the extent necessary, to resolve any disputes under the Agreement or to effectuate the terms of the Agreement.
- n. This document shall constitute a final judgment for purposes of Rule 58 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: _____, 2020

The Honorable
United States District Judge

Exhibit 4

[Notice of Class Action Lawsuit, Settlement and Fairness Hearing, Notice of Collective Action Lawsuit and Consent to Join]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
:
NORBIVI NASIMOVA, individually and on behalf of :
all others similarly situated, :
: ECF
Plaintiff, : 16 Civ. 01005 (SJ)(PK)
:
-against- :
:
ATTENTIVE HOME CARE AGENCY INC. d/b/a :
ALWAYS HOME CARE, ALWAYS HOME CARE :
AGENCY INC., YELENA PUSTILNIK and JOHN :
DOES #1-10, :
:
Defendants. :
----- x

**NOTICE OF CLASS AND COLLECTIVE ACTION
SETTLEMENT AND SETTLEMENT FAIRNESS HEARING**

TO: ALL INDIVIDUALS EMPLOYED BY ATTENTIVE
HOME CARE AGENCY, INC. D/B/A ALWAYS HOME
CARE (“ATTENTIVE” OR “DEFENDANT”) AS HOME
HEALTH AIDES FROM FEBRUARY 28, 2010
THROUGH OCTOBER 31, 2019 (“CLASS MEMBERS”
OR “CLASS”).

EXCLUSION DEADLINE: ANY REQUESTS FOR EXCLUSION MUST BE MAILED TO
THE CLAIMS ADMINISTRATOR IN THE MANNER DESCRIBED BELOW,
POSTMARKED ON OR BEFORE [INSERT DATE] *[45 days after mailing of this notice by
the administrator]*.

OBJECTION DEADLINE: ANY NOTICES OF OBJECTIONS AND/OR INTENTIONS TO
APPEAR AND BE HEARD ORALLY AT THE SETTLEMENT FAIRNESS HEARING MUST
BE MAILED TO THE CLAIMS ADMINISTRATOR IN THE MANNER DESCRIBED
BELOW, POSTMARKED ON OR BEFORE [INSERT DATE] *[45 days after mailing of this
notice by the administrator]*

I. PURPOSE OF THIS NOTICE

This Notice is given pursuant to Federal Rule of Civil Procedure 23, the Fair Labor Standards Act, and an Order entered by the United States District Court for the Eastern

District of New York (the “Court”), dated _____ (the “Preliminary Order”). The above-captioned action (the “Action”) is now pending before the Court as a class action, conditionally certified for purposes of settlement only. The Action seeks damages against Attentive for unpaid minimum wages (including under the Wage Parity Act and the prevailing wage pursuant to N.Y.C. Admin. Code § 6-109), overtime pay, spread-of-hours pay, statutory damages under the New York Wage Theft Prevention Act, and related remedies.

This Notice informs you of the pendency of the Action and the existence of a proposed settlement (the “Settlement”) that will affect the rights of all Class Members.

You may be a Class Member. This Notice describes rights that Class Members have under the proposed Settlement and the steps Class Members must take in relation to the Action.

This Notice is not an expression of any opinion by the Court as to the merits of any claims or any defenses asserted by any party in the Action or the fairness or adequacy of the proposed Settlement.

II. SUMMARY OF PROPOSED SETTLEMENT

A. Proposed Monetary Terms

Pursuant to the Settlement, Attentive has agreed to pay a total of \$550,000.00 dollars (the “Total Settlement Amount”) to fully and finally resolve the Action and to satisfy all claims of Class Members.

After deducting (1) attorneys’ fees and expenses of Class Counsel, (2) fees of the Claims Administrator, and (3) payments to the Named Plaintiff, the Claims Administrator will distribute all remaining amounts (the “Net Settlement Fund”) to Class Members based on the allocation formula set forth below in the section entitled “Distribution and Allocation of Settlement Proceeds.”

B. Attorneys’ Fees and Costs Sought

“Plaintiffs’ Counsel” or “Class Counsel” means the law firm of William Coudert Rand, 501 Fifth Ave., 15th Floor, New York, N.Y. 10017.

Attentive has agreed to pay to pay Class Counsel’s fees and expenses in an amount not to exceed \$75,000.00. Class Counsel will not make any further application to the Court for any additional fees, costs and/or expenses.

C. Awards Sought for the Named Plaintiff

Attentive has agreed to pay the Named Plaintiff the sum of \$15,000.00 as a service award.

III. NOTICE OF SETTLEMENT FAIRNESS HEARING

NOTICE IS HEREBY GIVEN, pursuant to Federal Rule of Civil Procedure 23 and the Preliminary Order, that a hearing will be held before the Honorable _____, in Courtroom _____ of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201, at 10:00 a.m., on _____, 2020 (the "Settlement Fairness Hearing") to: (i) determine whether a class should be certified for settlement purposes; (ii) determine whether the Settlement Agreement dated _____ (the "Settlement Agreement") should be approved by the Court as being fair, reasonable and adequate for the Class Members; (iii) consider the application of Plaintiffs' Counsel for an award of attorneys' fees and expenses, as agreed by Attentive; and (iv) consider Class Counsel's request for a service award to the Named Plaintiff for her participation as class representative for participating in this litigation.

The Court, in the Preliminary Order, has conditionally certified, for settlement purposes only, a Class consisting of all individuals who were employed by Attentive as home health aides from February 28, 2010 through October 31, 2019.

IV. BACKGROUND OF THE ACTION

On February 29, 2016, Named Plaintiff Norbivi Nasimova brought this lawsuit against Attentive and Yelena Pustilnik on behalf of herself and all others similarly situated ("Plaintiffs").

Specifically, Plaintiffs allege, among other things, that they are owed (a) overtime pay at the rate of one and one-half times their regular wage rate under the FLSA and the New York Labor Law ("NYLL") for work in excess of forty (40) hours per workweek, (b) wages for the 11 hours deducted from their 24-hour shifts for 3 hours of meal breaks and 8 hours of sleep, (c) spread of hours wages for hours worked a spread of more than 10 hours in a day, (d) minimum wages under the Wage Parity Act and the prevailing wage pursuant to N.Y.C. Admin. Code § 6-109, and (e) statutory damages for violations of the notice provisions of the New York Wage Theft Prevention Act. Plaintiffs also sought liquidated damages, together with prejudgment interest and attorneys' fees and costs.

Defendants have denied any wrongdoing or liability and are vigorously contesting all claims that have been asserted.

V. BACKGROUND TO THE SETTLEMENT

Before entering into the Settlement, Plaintiffs' counsel conducted an investigation relating to the events and transactions underlying Plaintiffs' claims. Plaintiffs' Counsel's decision to enter into this Settlement was made with knowledge of the facts and circumstances underlying Plaintiffs' claims and the strengths and weaknesses of those claims. In determining to settle the Action, Plaintiffs' Counsel has analyzed the evidence adduced during pretrial proceedings and settlement negotiations, and has taken into account the substantial expense and length of time necessary to prosecute the litigation through class certification, trial, post-trial motions and likely appeals, taking into consideration the significant uncertainties in predicting the outcome of this complex litigation. The parties negotiated over the course of months to reach

agreement on the terms of the Settlement. Plaintiffs' Counsel believes that the Settlement described herein confers substantial benefits upon the Class Members. Based upon consideration of these factors, and others, Plaintiffs' Counsel has concluded that it is in the best interest of Plaintiffs, and the Class Members, to settle the Action on the terms described herein, and that such Settlement is fair, reasonable and adequate to the Class.

Plaintiffs' Counsel believes that if the Action were not settled, and (1) the Court certified the Action as a class action over Attentive's opposition, (2) the Action proceeded to trial, and (3) the individual Named Plaintiff and the Class Members prevailed on every claim and contention asserted, the recovery by judgment could be greater than the recovery under the Settlement. However, Plaintiffs' Counsel considered that there was a substantial risk that, if the Action proceeded, class certification would not be granted, and that, even if certification were granted, Plaintiffs and the Class Members might not have prevailed on any or all of their claims. Plaintiffs' Counsel also considered the likelihood that Attentive would appeal any adverse rulings, which would, at a minimum, substantially delay any recovery and present a risk that such rulings would be reversed in Attentive's favor. Finally, Plaintiffs' Counsel considered the risk that Attentive might file for bankruptcy if Plaintiffs were able to successfully obtain a large judgment after trial.

Attentive denies all allegations of wrongdoing or liability whatsoever. It desires to settle and terminate all existing or potential claims against it which were, or could have been, asserted in the Action, without in any way acknowledging any fault or liability, in order to eliminate the expense and uncertainty of protracted litigation. The Settlement is not, and shall not, be construed or be deemed to be, evidence or an admission or a concession on the part of Attentive of any fault or liability or damages whatsoever, and Attentive does not concede any infirmity in the defenses that it has asserted or could have asserted in the Action.

The amount of damages, if any, which Plaintiffs could prove on behalf of themselves or the Class Members was also a matter of dispute. The Settlement's provisions do not constitute a finding, admission, or concession of the existence, extent, or measure of damages. No determination has been made by the Court as to liability or the amount, if any, of damages incurred by the Class, nor on the proper measure of any such damages. The determination of damages, like the determination of liability, is a complicated and uncertain process. The Settlement herein will provide an immediate and substantial benefit, and avoid the risks that liability or damages might not be proved at trial, as well as the risk that class certification might not be granted.

THE COURT HAS NOT FINALLY DETERMINED THE MERITS OF PLAINTIFFS' CLAIMS OR ATTENTIVE'S OR YELENA PUSTILNIK'S DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING THAT ATTENTIVE OR YELENA PUSTILNIK VIOLATED ANY LAW, DUTY, OR OBLIGATION OR THAT CLASS MEMBERS COULD HAVE RECOVERED ANY AMOUNT IF THE ACTION WERE NOT SETTLED.

VI. DISTRIBUTION AND ALLOCATION OF SETTLEMENT PROCEEDS

The Effective Date of the Settlement is the later of (1) thirty-three (33) days after entry of an order and final judgment by the Court granting final approval of the Settlement, if no appeal of such final approval is then pending, or (2) if an appeal of such final approval is then pending, the day after the order and final judgment is affirmed on appeal.

The Claims Administrator will make the distribution of the Net Settlement Fund to Class Members promptly after the Effective Date (and in any event no later than thirty days after the Effective Date).

ALLOCATION

The Claims Administrator will divide the Net Settlement Amount among five claims:

1. 20% of the Net Settlement Amount will be allocated to the claims related to the loss of the federal companionship exemption under the FLSA (the “First Claim Allocation”);
2. 8% of the Net Settlement Amount will be allocated to the claims related to the alleged unpaid hours for 24-hour, or “live-in,” shifts (the “Second Claim Allocation”);
3. 18.5% of the Net Settlement Amount will be allocated to the claims for unpaid spread-of-hours wages (the “Third Claim Allocation”);
4. 35% of the Net Settlement Amount will be allocated to the claims for other unpaid wages, including minimum wage, training time, Wage Parity Act wages and prevailing wages under the N.Y.C. Admin Code § 6-109 (the “Fourth Claim Allocation”); and
5. 16.5% of the Net Settlement Amount will be allocated to the claims related to the alleged failure to provide Wage Theft Protection Act-compliant new-hire notices and pay statements (the “Fifth Claim Allocation”).
6. 2% of the Net Settlement Amount will be allocated to the claims related to unpaid wages and the alleged failure to provide Wage Theft Prevention Act compliant notices and pay statements to individuals who worked for Attentive solely during the Period of February 28, 2010 to December 31, 2010 (the “Sixth Claim Allocation”). If total distributions with respect to the Sixth Claim Allocation are less than 2% of the Net Settlement Amount, the difference between the total distributions with respect to the Sixth Claim Allocation and 2% of the Net Settlement Amount will be treated as part of the amount available to be distributed under the Fifth Claim Allocation.

The Claims Administrator will then determine each Class Member’s share, if any, of the First Claim Allocation, Second Claim Allocation, Third Claim Allocation, Fourth Claim Allocation, and/or Fifth Claim Allocation as follows:

- (i) Each Class Member’s share of the First Claim Allocation, if any, will be determined by dividing the total number of overtime hours the Class Member worked as a home health aide for Attentive from January 1, 2015 through October 13, 2015, by the total number of overtime hours all Class Members worked as home health aides for Attentive from January 1, 2015 through October 13, 2015, and then multiplying this quotient by the amount of the First Claim Allocation (the result being the “First Claim Share”);
- (ii) Each Class Member’s share of the Second Claim Allocation, if any, will be determined by dividing the total number of “live-in” shifts worked by the Class Member

as a home health aide for Attentive from January 1, 2011 through October 31, 2019 (the “Relevant Period”), by the total number of “live-in” shifts worked by all Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Second Claim Allocation (the result being the “Second Claim Share”);

- (iii) Each Class Member’s share of the Third Claim Allocation, if any, will be determined by dividing the total number of weeks worked by the Class Member as a home health aide for Attentive during the Relevant Period, by the total number of weeks worked by all Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Third Claim Allocation (the result being the “Third Claim Share”). The hours worked by the Class Member as a home health aide for Attentive between January 1, 2017 and December 31, 2018 shall count twice for purposes of this calculation;
- (iv) Each Class Member’s share of the Fourth Claim Allocation, if any, will be determined by dividing the total number of weeks worked by the Class Member as a home health aide for Attentive during the Relevant Period, by the total number of weeks worked by all Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Fourth Claim Allocation (the result being the “Fourth Claim Share”);
- (v) Each Class Member’s share of the Fifth Claim Allocation, if any, will be determined by dividing the total number of “live-in” cases worked by the Class Member as a home health aide for Attentive during the Relevant Period, by the total number of “live-in” cases worked by all Class Members as home health aides for Attentive during the Relevant Period, and then multiplying this quotient by the amount of the Second Claim Allocation (the result being the “Fifth Claim Share”); and
- (vi) Each Class Member’s share of the Sixth Claim Allocation, if any, will be the lesser of: (i) the amount determined by dividing the Sixth Claim Allocation evenly among all Settlement Class Members who submit a Claim Form that is accepted by the Claims Administrator; and (ii) \$50.00.

VII. RELEASE OF CLAIMS

Unless you exclude yourself (or “opt-out”) from the Settlement, as described below, you will be subject to the Court’s judgment and will not be permitted in the future to bring any “Released Claims” against Attentive, its owners, employees, and affiliated entities, nor will you be permitted to participate as a class or collective member in any other action or lawsuit based on any of the Released Claims, regardless of whether such an action is already pending or may be filed in the future.

Upon entry of an order by the Court granting final approval of the Settlement, each Class Member (including you) who does not timely opt-out, will, on behalf of him/herself and his/her heirs, successors, executors, administrators, and assigns (“Releasors”), fully and finally release and discharge Attentive and Yelena Pustilnik (the “Defendants”), and their

respective owners, parents, subsidiaries, affiliates, predecessors, successors, members, shareholders, officers, directors, agents, current and former employees, attorneys, insurers, and assigns (collectively, “Releasees”) of any and all claims against Defendants, including, *inter alia* (i) any and all claims, causes of action, obligations, damages, liabilities, and expenses (inclusive of attorneys’ fees and costs) of any kind arising under the FLSA, the NYLL, the Minimum Wage Order for Miscellaneous Industries and Occupations, 12 N.Y.C.R.R. Part 152, and all claims for breach of any contract (including third-party beneficiary claims) relating to compensation or benefits covered under N.Y. Public Health Law § 3614-c or N.Y.C Admin. Code § 6-109; or (ii) arising under any federal, New York, or local wage-and-hour or compensation-related laws.

The claims released above are referred to the “Released Claims.” Without limitation, the Released Claims include all claims relating to minimum wages, overtime compensation, regular wages, spread-of-hours pay, travel time pay, wage parity, employee benefits, supplemental wages, wage notice, pay statement, record-keeping violations, liquidated damages, interest, attorneys’ fees or costs, or other wages or similar amounts, whether pursuant to any written or oral contract, promise, or other understanding, including any claims asserted as an alleged third party beneficiary of any contract, or pursuant to any federal, state, or local rule, regulation or law, including, but not limited to (all as amended), any claim arising under the FLSA, NYLL, NY Public Health Law § 3614-c, 12 NYCRR Part 142; and N.Y. City Admin. Code § 6-109. Also without limitation, the Released Claims include all claims asserted or purported to be asserted on behalf of the Settlement Class Members in *Wallace v. Attentive Home Care Agency, Inc. d/b/a Always Home Care*, 157441/2017 (N.Y. Cty. Sup. Ct.) and *Prawdzik v. Attentive Home Care Agency, Inc. d/b/a Always Home Care, et al.*, 19-cv-04931 (E.D.N.Y.).

VIII. YOUR RIGHTS AS A COLLECTIVE ACTION MEMBER

With respect to your claims under the FLSA, you have two options under this Settlement: You may: (A) join or “opt in” to the settlement to receive a payment for your FLSA claims or (B) exclude yourself from the Collective Action.

A. FLSA Option 1: To Receive Money Under the Settlement for Your FLSA Claims

If you wish to receive a payment under the settlement for your FLSA claims, you must choose to join in this case by signing and returning the Consent to Become Party Plaintiff form (“FLSA Consent Form”) attached to this Notice. By signing and returning the FLSA Consent Form you are agreeing to designate the class representative as your agent to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff’s counsel concerning attorney’s fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative Plaintiff will be binding on you if you join this lawsuit. After the Court has finally approved the Settlement and there are no appeals, you will receive distributions from the Claims Administrator, as described above. If you choose this option, you will be bound by all determinations and judgments in this Action concerning the Settlement, including the Release stated above, whether favorable or unfavorable, with respect to your FLSA claims. This means that you cannot sue, continue to sue, be a party, or be a class member or collective member in any other lawsuit against the Releasees based on your FLSA claims.

Furthermore, you can join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an “opt-in” consent form by _____ [insert date that is 45 days from date of notice mailing].

B. FLSA Option 2: To Exclude Your FLSA Claims from the Settlement

If you do not wish to be part of the Settlement with respect to your FLSA claims, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the Settlement with respect to those claims. Your decision not to join this case will not affect your right to bring a similar case on your own at a future time. However, claims under the FLSA must be brought within 2 years of the date the claim accrues, unless the employer’s violation of the law was “willful,” in which case the claim must be brought within 3 years. Claims under the New York Labor Law must be brought within 6 years of the date the claim accrues. In certain circumstances, such as when an employer fails to post notice of employees’ rights, a court may toll the statute of limitations.

IF YOU ARE A COLLECTIVE ACTION MEMBER, AND YOU DO NOT PROPERLY OPT IN TO THE COLLECTIVE ACTION, YOU WILL NOT BE BOUND BY THE COLLECTIVE ACTION SETTLEMENT AND THE FINAL JUDGMENT OF THE COURT AS TO YOUR FLSA CLAIMS, AND YOU WILL NOT BE ENTITLED TO ANY PAYMENT UNDER THE SETTLEMENT.

IF YOU ARE A COLLECTIVE ACTION MEMBER, AND YOU OPT IN TO THE COLLECTIVE ACTION, YOU WILL BE BOUND BY THE COLLECTIVE ACTION SETTLEMENT AND THE FINAL JUDGMENT OF THE COURT AS TO YOUR FLSA CLAIMS.

IX. YOUR RIGHTS AS A CLASS MEMBER

With respect to all other claims, including but not limited to claims under the New York Labor Law, Wage Parity Act, Wage Theft Prevention Act, and N.Y.C. Admin. Code, you have three options under this Settlement. You may: (A) remain in the Class and receive a payment under this Settlement; (B) exclude yourself from the Class and “opt-out”; or (C) object to the Settlement.

A. Option 1: To Receive Money Under the Settlement for Your Other Claims

If you wish to remain in the Class and receive a payment under the Settlement, you are not required to do anything, unless you worked for Attentive solely during the time period of February 28, 2010 to December 31, 2010. If you worked for Attentive solely during the time period of February 28, 2010 to December 31, 2010 and you wish to receive a payment under the settlement for your claims, you must sign and return the Claim Form attached to this Notice. After the Court has finally approved the Settlement and there are no appeals, you will receive distributions from the Claims Administrator, as described above. If you choose this option, you will be bound by all determinations and judgments in this Action concerning the Settlement, including the Release stated above, whether favorable or unfavorable. This means

that you cannot sue, continue to sue, be a party, or be a class member or collective member in any other lawsuit against the Releasees based on the Released Claims or arising out of the issues raised in the Action.

B. Option 2: To Exclude Yourself from the Settlement for Your Other Claims

Your share of the Settlement Money may be much less than your full damages and you have the right to opt-out of the settlement on or before [insert date] and separately pursue your claims, in which case you will not receive any of the settlement monies and will not release any of your claims. The statute of limitations applicable to any Class Member who excludes him or herself from the Settlement will be tolled for the period that the claim was prosecuted in the Action.

If you do not wish to participate in the Settlement, you may exclude yourself (or “opt-out”) by sending a letter to the Claims Administrator that says: “My name is _____. My current job title is _____. My current address is _____. My current phone number is _____. I wish to exclude myself and opt-out of the Attentive wage and hour settlement. I understand that by excluding myself from the Settlement, I will not be entitled to any payments or other relief under the Settlement.”

To be effective, the letter must be sent to the Claims Administrator by First Class Mail, postage prepaid, and must be postmarked by **[INSERT DATE] /45 days after mailing of notice**. The Claims Administrator address to which the letter must be mailed is: **[INSERT CLAIMS ADMINISTRATOR ADDRESS]**

IF YOU ARE A CLASS MEMBER, AND YOU DO NOT PROPERLY EXCLUDE YOURSELF FROM THE CLASS, YOU WILL BE BOUND BY THE CLASS ACTION SETTLEMENT AND THE FINAL JUDGMENT OF THE COURT.

IF YOU EXCLUDE YOURSELF FROM THE CLASS, YOU WILL NOT BE BOUND BY THE SETTLEMENT, OR BY THE FINAL JUDGMENT OF THE COURT, BUT YOU WILL NOT BE ENTITLED TO ANY PAYMENT UNDER THE SETTLEMENT.

C. Option 3: To Object to the Settlement for Your Other Claims

If you do not opt-out, you may object to the Settlement. If you choose to present objections to the proposed Settlement, you must set forth your objections in a written statement and mail it to the Claims Administrator (“Written Objection”).

A Written Objection must be postmarked by **[INSERT DATE 45 DAYS AFTER MAILING OF NOTICE]**. The Written Objection must include: (1) the words, “I object to the Attentive wage-and-hour settlement”; (2) all reasons for the objection (any reasons not included in the Written Objection will not be considered); and (3) your name, job title, address, and telephone number.

If you wish to appear at the Fairness Hearing, you must state your intention to do so in your Written Objection. You may withdraw your Written Objection at any time. You may not appear at the Fairness Hearing unless you file a timely Written Objection that complies with

the procedures set out in this notice. You may not present an objection at the Fairness Hearing based on a reason not stated in your Written Objection.

An objection will not be valid or considered by the Court if it does not specifically comply with all of the requirements listed herein.

X. PROHIBITION AGAINST RETALIATION

If you are a current employee, you should know that Attentive is prohibited by law from retaliating against you for participating in this settlement. The parties agree that this is a fair settlement and recommend each Class Member to remain in the class and accept the settlement monies. Attentive emphasizes that there will be no retaliation against any Class Member for remaining in the class.

XI. CHANGE OF ADDRESS

If you change your residence after receiving this Notice, or if the notice was misaddressed, you should supply your name and correct address to counsel listed in this Notice and to the Claims Administrator to ensure that further communications reach you.

XII. EXAMINATION OF PAPERS AND INQUIRIES

If you wish to obtain a copy of the Settlement Agreement, or if you have other questions, you may contact the claims administrator at _____, or Class Counsel at _____.

PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.

Dated: _____, 2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
NORBIVI NASIMOVA, individually and on behalf of :
all others similarly situated, :
Plaintiff, : **ECF**
: 16 Civ. 01005 (SJ)(PK)
:
-against- :
ATTENTIVE HOME CARE AGENCY INC. d/b/a :
ALWAYS HOME CARE, ALWAYS HOME CARE :
AGENCY INC., YELENA PUSTILNIK and JOHN :
DOES #1-10, :
Defendants. :
-----x

CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of the above styled action in my name and on my behalf by the above representative Plaintiff and so designate the collective class representative as my agent to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with the Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.

Printed Name

Signature

Street Address

Telephone and Email

City, State, Zip Code

Date

PLEASE RETURN THIS FORM FOR FILING WITH THE COURT BY
_____ [insert date that is 45 days from date of notice mailing].

TO: [insert URL for Settlement Website] OR [insert Simpluris address]

CLAIM FORM
ATTENTIVE LITIGATION

No. 16 Civ. 001005 (PK) (SJ)

In order for this Claim Form to be valid you must fill out this Claim Form and submit it via [INSERT SETTLEMENT WEBSITE URL] or mail it so that it is received no later than _____, 2020 [insert date that is 45 days from mailing of notice] by ATTENTIVE LITIGATION, c/o the Claims Administrator: [ADDRESS]

You may send the Claim Form to the Claims Administrator via first class United States mail. However, if the Claims Administrator determines that your Claim Form was post-marked after the deadline, the **sole acceptable proof** that you mailed the Claim Form to the Claims Administrator within the required time period shall be **an original receipt from the United States Postal Service evidencing the mailing of such Claim Form by certified mail**. As a result, you should strongly consider sending this Claim Form to the Claims Administrator by certified mail, and take care to retain the receipt.

Please provide the following information (please print or type):

Your Name: (Please Print) _____
First _____ Middle _____ Last Name _____

Current Address:

Street or P.O. Box

City _____ State _____ Zip Code _____

Telephone No.: _____

Email Address(es): _____

I have read and understand the Official Court Notice of Settlement of Class Action.

I understand that I am releasing all claims described in the Official Court Notice of Settlement of Class Action. I certify that the information submitted by me is true and correct, subject to prosecution for perjury.

Date: _____

Signature: _____

If your address changes after submitting this Claim Form but before receiving money from the proposed settlement, please send a letter to ATTENTIVE LITIGATION, c/o the Claims Administrator: [ADDRESS] to ensure that the settlement check is properly sent to your new address.

Exhibit 5

Newspaper Publication Notice

“NOTICE OF (A) CERTIFICATION OF CLASS OF HOME HEALTH AIDES WHO WERE EMPLOYED BY ATTENTIVE HOME CARE AGENCY, INC. D/B/A ALWAYS HOME CARE (“ATTENTIVE”) FROM FEBRUARY 28, 2010 TO OCTOBER 31, 2019 and (B) SETTLEMENT OF CLASS. INDIVIDUALS WHO WORKED FOR ATTENTIVE SOLELY DURING THE TIME PERIOD OF FEBRUARY 28, 2010 TO DECEMBER 31, 2010 MUST SUBMIT A CLAIM FORM, AVAILABLE AT [INSERT URL FOR SETTLEMENT WEBSITE], IN ORDER TO RECOVER UNDER THE SETTLEMENT. FOR MORE INFORMATION, GO TO **[insert URL for Settlement Website]** OR CALL PLAINTIFFS’ ATTORNEY WILLIAM C. RAND ESQ. at 212-286-1425”

Exhibit 6
Notice Postcard

Attentive/Always Home Care Settlement

You have been identified as someone who may have worked for Attentive/Always Home Care (“Attentive”) between 2/28/10 and 10/31/19. There was a lawsuit by employees against Attentive, which has settled. This means you may be entitled to money. You have 3 options: (1) to get your full share of the money, you **MUST** sign and return this postcard by **[insert date]**. By signing the postcard you are joining the claim against Attentive under the Fair Labor Standards Act (“FLSA”) and giving up your right to sue separately. (2) To get a smaller share of the money, you do not need to do anything. If you do nothing, you will keep your right to sue Attentive separately under the FLSA, but you will join the claims against Attentive under New York law. (3)

||||||||||||||||||||||||||||||

Postal Service: Please Do Not Mark

Claim No.: #####

***** AUTO**5-Digit Zip Code

ALPHA-NUMERIC CODE

Class Member Name

Street Address

City, State Zip Code

BAR CODE

If you do not want to join the settlement, you must send an “opt-out” letter by [insert date]. “Opting-out” means you will not receive any money, but you will keep your right to sue Attentive. The instructions for sending an “opt-out” letter can be found at [insert URL]. The Court will hold a hearing to decide whether to grant final approval of the settlement on [insert date] at [insert time]. You can find the full settlement notice and additional information about the case at [insert URL].

IF YOU HAVE ANY QUESTIONS REGARDING THIS FORM OR THE SETTLEMENT YOU MAY CONTACT the class attorney Will Rand at 212-286-1425 or the Administrator at [insert Simpluris phone number] or see [insert URL].

EMPLOYEE INFORMATION	[UPDATED EMPLOYEE INFORMATION]
«BarcodeString» SIMID «SIMID» «FirstName» «LastName» «Address1» «Address2» «City» «State» «Zip»	Name(s) While Employed: _____ Address: _____ City: _____ State: _____ Zip: _____ Telephone: _____

If any of the Employee Information for you above is incorrect, to be sure you get your share of the settlement money, you MUST provide Updated Employee Information in the space provided above. Sign this Form, tear at the perforation above, and return by U.S. Mail no later than [insert date that is 45 days from date of notice mailing].

I consent to join the FLSA claims against Attentive/Always Home Care

SIGN: _____

Release of Claims: I understand and agree that, by signing and submitting this FLSA Consent Form, I am becoming a plaintiff in the case of *Nasimova v. Attentive Home Care Agency, Inc.*, 16-cv-1005 (EDNY) and am settling my claims and am fully and finally releasing and discharging Attentive, as described in detail in Section VII of the Notice that has been posted at [insert URL for Settlement Website], which I acknowledge having read. **I understand that if I wish to receive a paper copy of the Notice by mail, I can get one by contacting the Administrator at [insert Simpluris phone number].**

NOTICE OF SETTLEMENT: A proposed settlement ("Settlement") has been reached in a lawsuit entitled *Nasimova v. Attentive Home Care Agency, Inc.*, 16-cv-1005 (EDNY) (the "Action") that has been brought on behalf of those employed by Attentive at some time between February 28, 2010 and October 31, 2019 (the "Class Period"). More information on filing a claim, objecting, or excluding yourself from the Settlement, and the terms and benefits of the Settlement, are available at [insert URL for Settlement Website], as well as in the Settlement Agreement. If you would like a copy of the Settlement Agreement, you can contact the class attorney Will Rand at 212-286-1425.

You have received this FLSA Consent Form because Attentive's records indicate that you may be a member of the Class and you may be eligible to participate in this Settlement and receive money. To be eligible to receive money under the Settlement for claims you may have under the FLSA, you must sign and return this FLSA Consent Form to the Administrator by U.S. mail so that it is postmarked by no later than [insert date]. The amount that you will receive if you return this FLSA Consent Form depends on the number of hours you worked during the Class Period. If you do not return this FLSA Consent Form, you will still receive a smaller amount under the Settlement with respect to all other claims, including claims under New York state and local laws, and your claims will also be released. All settlement payments will be reduced by applicable tax deductions and withholdings. If you do not wish

to participate in the Settlement, you may exclude yourself (or “opt-out”) by sending a letter to the Administrator by U.S. Mail so that it is postmarked by no later than [insert date]. Additional information regarding the requirements for submitting an “opt-out” letter is available at [insert URL for Settlement Website].

FINAL FAIRNESS HEARING. The Court has scheduled a final fairness hearing before the Hon. Magistrate Judge Kuo, in Courtroom ____ of the U.S. District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, N.Y., 11201, at 10:00 a.m., on _____, 2020, to decide whether to issue final approval of the proposed \$550,000 Settlement. You or your attorney may attend and ask to appear at the hearing by mailing a “Written Objection” to the Administrator by U.S. Mail so that it is postmarked by no later than [insert date] but you do not have to. Additional information regarding the requirements for submitting a Written Objection is available at [insert URL for Settlement Website].

NO POSTAGE
NECESSARY IF
MAILED IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. ### LOS ANGELES, CA

POSTAGE WILL BE PAID BY ADDRESSEE

NASIMOVA v. ATTENTIVE/ALWAYS HOME CARE

C/O SIMPLURIS INC.

P.O. BOX _____

_____, CA _____