

**Exhibit "A"**  
**[Notice of Class Action Lawsuit, Settlement and Fairness Hearing]**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
BEVOLYN DARBY,	:	ECF
Individually and on Behalf of All Other	:	17 Civ. 5370 (RMB)
Persons Similarly Situated,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	
	:	
STERLING HOME CARE, INC., MARK R. ZWERGER,	:	
MATTHEW G. ANDERSON, MICHELE THOMAS	:	
EILEEN KILLEEN, and JOHN DOES #1-10,	:	
	:	
Defendants.	:	
-----X		

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

TO: ALL INDIVIDUALS EMPLOYED BY STERLING HOME CARE, INC. ("STERLING" OR "DEFENDANT") AS HOME HEALTH AIDES ON OR BETWEEN JANUARY 1, 2015 AND OCTOBER 1, 2015 ("CLASS MEMBERS" OR "CLASS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE PROCEEDINGS IN THIS LITIGATION.

**EXCLUSION DEADLINE:** ANY REQUESTS FOR EXCLUSION MUST BE MAILED TO THE ADMINISTRATOR IN THE MANNER DESCRIBED BELOW, POSTMARKED ON OR BEFORE **JUNE 17, 2019**. *[30 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 ADMINISTRATOR IN THE MANNER DESCRIBED BELOW, POSTMARKED ON OR BEFORE **JUNE 17, 2019**. *[30 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 Southern District of New York (the “Court”), dated April 19, 2019 (the “Preliminary Order”). The above-captioned action (the “Action” or “Lawsuit”) is now pending before the Court as a class action, conditionally certified for purposes of settlement only. The Action seeks damages against STERLING for unpaid overtime 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, STERLING has agreed to pay a total of \$342,699.41 dollars (the “Total Settlement Amount”) to fully and finally resolve the Action and to satisfy all claims of Class Members.

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

STERLING will pay the Net Settlement Fund to Class Members no later than 35 days after the Court issues an order granting final approval of the Settlement if no appeal is filed or if an appeal is filed within 5 days after the order denying the appeal.

### **B. Attorneys’ Fees and Costs Sought**

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

STERLING has agreed to pay Class Counsel’s fees and expenses in the amount of (\$84,674.85).

### **C. Awards Sought for the Named Plaintiff**

STERLING has agreed to pay the Named Plaintiff in addition to her class claim settlement amount, the sum of \$1,000 as a service award and \$21,229.95 for her individual claims.

### **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 Richard M. Berman, in Courtroom 17B of the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, New York 10007-1312, at 9:30 a.m., September 3, 2019 (the “Settlement Fairness Hearing”) to: (i) determine whether a class should be certified for settlement purposes; (ii) determine whether the Settlement Agreement dated January 10, 2019 (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 STERLING; 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 preliminarily certified, for settlement purposes only, a Class consisting of all individuals who were employed by STERLING as home health aides on or between January 1, 2015 and October 1, 2015 whose paystubs during the period showed more than 40 hours worked in a week.

### **IV. BACKGROUND OF THE ACTION**

On July 24, 2017, Named Plaintiff brought this lawsuit against STERLING and the Individual Defendants 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 on and after January 1, 2015, (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 (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.

Defendant has denied any wrongdoing or liability and is 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 the Action proceeded to trial, and 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, Plaintiffs and the Class Members might not have prevailed on any or all of their claims. Plaintiffs' Counsel also considered the likelihood that STERLING 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 STERLING's favor. Finally, Plaintiffs' Counsel considered the risk that STERLING might file for bankruptcy if Plaintiffs were able to successfully obtain a large judgment after trial.

STERLING 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 STERLING of any fault or liability or damages whatsoever, and STERLING 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 STERLING'S DEFENSES THERETO. THIS NOTICE DOES NOT IMPLY THAT THERE HAS BEEN OR WOULD BE ANY FINDING THAT STERLING 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 (30) days after entry of an order 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, three days after the order is affirmed on appeal.

The Settlement Administrator is Hamlin & Burton, 615 Crescent Executive Court, Suite 212, Lake Mary, FL 32746 (321) 972-0121. The Administrator will make the distribution of the Net Settlement Fund to Class Members no later than ten (10) days after the Effective Date.

The settlement monies to be paid to the class members equal their unpaid overtime hours (hours over 40 in a work week) as listed on their paystubs on and between January 1, 2015 and October 1, 2015 based on the difference between the pay rate of time and one half the class member's regular rate or blended rate and the amount actually paid for the overtime hours during the weeks of the period from January 1, 2015 through October 1, 2015.

## **VII. RELEASE OF CLAIMS**

Unless you exclude yourself (or "opt-out") from the Settlement, as describe below, you will be subject to the Court's judgment and will not be permitted in the future to bring any "Released Claims" against STERLING, it 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, on behalf of him/herself and his/her heirs, successors, executors, administrators, and assigns ("Releasors"), fully and finally releases and discharges 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 and from any and all claims alleging that they were not paid full wages for their hours over forty in a work week listed on their paychecks applicable to the period on or between January 1, 2015 and October 1, 2015. Among other claims, this release specifically does not release any claim for unpaid hours worked (including unpaid hours worked during 24hour shifts). The claims released above are referred to the "Released Claims." The Statute of limitation periods applicable to the class claims brought in the Lawsuit are tolled for the period from the filing of the Lawsuit to the dismissal of the Lawsuit.

## **VIII. YOUR RIGHTS AS A CLASS MEMBER**

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**

If you wish to remain in the Class and receive a payment under the Settlement, you are not required to do anything. After the Court has finally approved the Settlement and there are no appeals, you will receive distributions from the 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**

If you do not wish to participate in the Settlement, you may exclude yourself (or “opt-out”) by sending a letter to the Administrator that says (1) your name, address and telephone number and states that you wish to exclude yourself from or opt-out of the STERLING wage and hour settlement.

To be effective, the letter must be sent to the Claims Administrator by First Class Mail, postage prepaid, and must be postmarked by June 17, 2019 [*30 days after mailing*]. The Administrator address to which the letter must be mailed is: Hamlin & Burton Liability Management c/o Sterling Class 615 Crescent Executive Court, Suite 212, Lake Mary, FL 32746. If you opt out, your claims as a class member will be tolled from the filing to the dismissal of the Lawsuit.

**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**

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 Administrator (“Written Objection”).

A Written Objection must be postmarked by June 17, 2019 [*30 days after mailing*]. The Written Objection must include: (1) the words, “I object to the STERLING 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.

**IX. PROHIBITION AGAINST RETALIATION**

If you are a current employee, you should know that STERLING 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. STERLING emphasizes that there will be no retaliation against any Class Member for remaining in the class.

**X. 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 Administrator to ensure that further communications reach you.

**XI. 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 Administrator at [SterlingClass@hamlinandburton.com](mailto: SterlingClass@hamlinandburton.com) , or Class Counsel at 212-286-1425.

**PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.**

Dated: May 17, 2019