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Frank Hall, Charles Peterson, and Gregory Munson, on  
behalf of themselves and all others similarly situated

[Additional Counsel Listed on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF ORANGE**

Pete Homeres, Raul Becerra, Frank Hall, Charles  
Peterson, and Gregory Munson, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

EMCOR Facilities Services, Inc., an Ohio  
Corporation, and Does 1 through 50 inclusive,

Defendant.

Case No. 30-2020-01136058-CU-OE-CXC

**Assigned to the Honorable Glenda Sanders  
Department CX 101**

**AMENDED JOINT STIPULATION OF  
CLASS ACTION SETTLEMENT AND  
RELEASE**

Complaint Filed: March 2, 2020  
Amended Complaint: April 13, 2020

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13 *Attorneys for EMCOR Facilities Services, Inc., an Ohio Corporation*  
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1 Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson,  
2 individually and on behalf of all similarly situated current and former employees (collectively,  
3 “Plaintiffs”), and Defendant EMCOR Facilities Services, Inc., an Ohio Corporation, “EFS” or  
4 “Defendant”), (collectively, the “Parties”), subject to the terms and conditions hereof and final approval  
5 by the Court, hereby enter into this Amended Joint Stipulation of Class Action Settlement and Release  
6 (“Agreement”).

7 IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs, for themselves  
8 and the Class, and Defendant, by and through their respective attorneys, that subject to final court  
9 approval, the Class Action will be finally, fully, and forever compromised, released, resolved,  
10 discharged, and settled, subject to the terms and conditions set forth in this Agreement.

#### 11 RECITALS

##### 12 Background and Procedural History

13 1.1. On March 2, 2020, Plaintiffs filed their class action lawsuit against Defendant EFS in  
14 Orange County Superior Court, entitled *Pete Homeres et al. v. EMCOR Facilities Services, Inc. et al.*,  
15 Case No. 30-2020-01136058-CU-OE-CXC (“the Class Action”). Plaintiffs amended their complaint on  
16 April 13, 2020.

17 1.2. Plaintiffs’ First Amended Complaint alleges wage and hour violations on behalf of “all  
18 former, current, and future Maintenance Technicians of EFS who worked or are working in California  
19 during the relevant statutory period,” which runs from March 2, 2016 through the present. Specifically,  
20 the First Amended Complaint alleges that EFS failed to fully compensate technicians for mandatory  
21 travel time that they spent travelling to and from home. Plaintiffs also allege that EFS did not pay its  
22 maintenance technicians for other hours worked (“off-the-clock work”) and that EFS failed to provide  
23 uninterrupted and duty-free meal and rest breaks; to pay overtime premiums; and to reimburse for work  
24 expenses. Defendant deny any liability and contend they complied with all laws.

25 1.3. The Parties participated in one day of arm’s-length and informed negotiations at  
26 mediation with Mediator Todd A. Smith on March 15, 2021 and continued active settlement  
27 discussions for several weeks thereafter. These efforts resulted in a class-wide resolution, and the  
28 Parties executed a Memorandum of Understanding containing all material points of the Agreement on

1 April 30, 2021.

2 1.4. The Parties and their counsel are sufficiently familiar with the facts of these cases and  
3 the applicable laws to make an informed judgment as to the fairness of the Settlement, the respective  
4 strengths and weaknesses of the claims, the certifiability of the class Plaintiffs sought to certify, and the  
5 risks of proceeding in litigation. The Parties are represented by competent counsel and have had the  
6 opportunity to consult with counsel prior to the signing of this Agreement.

7 **PARTIES' STATEMENTS AND RECOGNITION OF THE BENEFITS OF THE SETTLEMENT**

8 1.5. The Action arises, among other things, out of Plaintiffs' contention that Defendant EFS  
9 was required to pay its maintenance technicians for all hours spent driving EFS-issued vans to and from  
10 their homes. Class Counsel has conducted extensive investigation into the facts of the Class Action,  
11 including formal written discovery, pre-mediation informal disclosures, and other investigation  
12 undertaken by counsel for Plaintiffs.

13 1.6. The Parties engaged in extensive negotiations and the exchange of data, documents, and  
14 information. Based on a thorough investigation and evaluation of these matters, Class Counsel and  
15 Plaintiffs have concluded that the proposed Settlement with Defendant for the consideration and on the  
16 terms set forth in this Agreement, is fair, reasonable, and adequate and is in the best interest of the  
17 Class in light of all known facts and circumstances, including the risk of significant delay, defenses  
18 asserted by Defendant, and numerous potential appellate issues.

19 1.7. Defendant denies each and all of the claims alleged by Plaintiffs. Defendant expressly  
20 denies any and all charges of wrongdoing or liability arising out of any of the acts, omissions, facts,  
21 matters, transactions, or occurrences alleged. Nevertheless, Defendant has taken into account the  
22 uncertainty and risks inherent in any litigation and have also concluded that further litigation of these  
23 actions would be protracted and expensive. Defendant, therefore, has determined that it is desirable  
24 and beneficial that the Class Action be settled in the manner and upon the terms and conditions set forth  
25 in this Agreement. Neither this Agreement, nor any document referred to or contemplated herein, nor  
26 any action taken to carry out this Agreement, is, may be construed as, or may be used as an admission,  
27 concession, or indication by or against Defendant of any fault, wrongdoing or liability whatsoever.

28 1.8. For the purposes of this Agreement only, the Parties agree to certification of the Class, to

1 include all Class Members. As set forth above, Plaintiffs expressly reserve their rights to move for class  
2 certification should the Court decide to not approve this Settlement.

### 3 DEFINITIONS

4 As used in this Agreement, the following terms shall have the meanings specified below:

5 2.1. "Agreement," "Settlement," or "Settlement Agreement" means this Joint Stipulation of  
6 Class Action Settlement and Release and all actions taken pursuant to and in furtherance of this  
7 Agreement.

8 2.2. "Administrator" means CAC Services Group, LLC or such other administrator as may  
9 be approved by the Court, which shall be responsible for administering the Settlement pursuant to the  
10 terms of the Agreement, the Preliminary Approval Order, the Final Approval Order, and the Judgment.  
11 The Administration Costs shall be paid out of the Maximum Settlement Amount.

12 2.3. "Administration Costs" means the amount approved by the Court to be paid to the  
13 Administrator to perform the Administration Duties as described in this Agreement. It is estimated that  
14 the Administration Costs will total an estimated \$5,000.

15 2.4. "Attorneys' Fees and Costs Payment" shall mean the amount of Attorneys'  
16 Fees and out-of-pocket expenses to prosecute the Class Action to be paid to Class Counsel, as approved  
17 by the Court.

18 2.5. "Class Action" or "Action" shall mean the above-captioned Class Action: *Pete*  
19 *Homeris et al. v. EMCOR Facilities Services, Inc. et al*, Case No. 30-2020-01136058-CU-OE-CXC,  
20 Orange County Superior Court.

21 2.6. "Class Counsel" shall mean the attorneys representing Plaintiffs in the Class Actions:  
22 Randy Renick, Cornelia Dai, and Elizabeth Song of Hadsell Stormer Renick & Dai LLP; William  
23 Saacke of the Saacke Law Group.

24 2.7. "Class List and Data" shall mean the information Defendant shall provide following  
25 Preliminary Approval for purpose of providing notice of the Settlement to the Class.

26 2.8. "Class" or "Class Members" shall mean all persons currently or formerly employed as  
27 maintenance technicians (including commercial maintenance technicians, HVAC technicians, and lead  
28 technicians) by Defendant as non-exempt/hourly employees in the State of California who drive

1 Defendant's vehicles to and from home to assigned job sites, at any time during the Class Period.

2 2.9. "Class Period" shall mean the period beginning March 2, 2016, and ending July 29,  
3 2021.

4 2.10. "Complaint" shall mean the civil complaint filed in this Class Action.

5 2.11. "Defendant" or "EFS" shall mean EMCOR Facilities Services, Inc.

6 2.12. "Defense Counsel" shall mean the attorneys representing Defendant: Joshua Kienitz,  
7 Maria Harrington, and Jordan Goldschmidt of Litter Mendelson, P.C.

8 2.13. "Effective Date" means the date by which this Settlement is finally approved as  
9 provided herein and the Court's Final Approval Order becomes binding. For purposes of this  
10 Agreement, the Final Approval Order becomes binding: (1) if there are no objections to the Settlement,  
11 then the date of final approval by the Court; (2) if there are objections to the Settlement, then the later  
12 of (a) the day after the deadline by which a notice of appeal to the California Court of Appeal of the  
13 Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and  
14 none is filed; (b) if such an appeal is filed, and the appeal is finally disposed of by ruling, dismissal,  
15 denial or otherwise, the day after the deadline for filing a request for further review of the Court of  
16 Appeal's decision passes and no further review is requested; (c) if an appeal is filed and there is a final  
17 disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal and further review of the  
18 Court of Appeal's decision is requested, the day after the request for review is denied with prejudice  
19 and/or no further review of the decision can be requested, or (d) if review is accepted, the day after the  
20 California Supreme Court affirms the Settlement. The Effective Date cannot occur until and unless  
21 final approval occurs with no objections to the settlement or, if there are any objections, then after there  
22 is no possibility of an appeal or further appeal that could potentially prevent this Agreement from  
23 becoming final and binding. The occurrence of the Effective Date is a prerequisite to Defendant  
24 funding the Maximum Settlement Amount and to any distributions from the Settlement Fund.

25 2.14. "Final Fairness / Approval Hearing" means the hearing to be conducted by the Court, or  
26 any other Court taking jurisdiction of this matter, to determine whether to finally approve the  
27 Settlement.

28 2.15. "Maximum Settlement Amount" ("MSA") means the non-reversionary sum of One

1 Million Two Hundred Fifty Thousand Dollars (\$1,250,000) that Defendant has already paid, and/or will  
2 pay, to resolve the Action, which includes the \$82,750 previously paid by Defendant to Class Members  
3 in connection with earlier individual settlement agreements in this Action. The MSA will also include  
4 the payments to: (i) Class Members, as described herein; (ii) the PAGA Payment; (iii) Service  
5 Payments to the Plaintiffs/Class Representatives, as described herein; (iv) Class Counsel's Attorneys'  
6 Fees and Costs, as described herein; and (v) Administration Costs, as described herein. In addition to  
7 the Maximum Settlement Amount, Defendant will be required to pay the employer's share of any  
8 payroll taxes (FICA and FUTA) on Individual Settlement Payments. Under no circumstances shall any  
9 portion of the MSA revert to Defendant. The Administrator shall establish a Qualified Gross  
10 Settlement Fund pursuant to the applicable Internal Revenue Code sections, into which Defendant will  
11 deposit the remaining settlement sum of One Million One Hundred Sixty-Seven Thousand Two  
12 Hundred Fifty Dollars (\$1,167,250) ("the Remaining Settlement Amount") and the employer's share of  
13 any payroll taxes.

14 2.16. "Individual Settlement Payment" shall mean the proportionate share of the NSF to be  
15 issued to a Class Member based upon the formula set forth below in Section IV of this Agreement.

16 2.17. "Net Settlement Fund" or "NSF" means the Maximum Settlement Fund less court-  
17 approved Class Counsel's Attorneys' Fees and Costs, including expert fees; Administration Costs; the  
18 Service Payments to the Class Representatives; the portion of the PAGA Payment to be paid to the  
19 Labor and Workforce Development Agency (LWDA); and the \$82,750 previously paid by Defendant  
20 to Class Members in connection with earlier individual settlement agreements in this Action. To the  
21 extent the Court does not approve the full amount of the requested Attorneys' Fees and Costs,  
22 Administration Costs, or the Service Payments, the Net Settlement Fund will increase accordingly.

23 2.18. "Notice Packet" refers to the documents mailed to the Class Members pursuant to the  
24 terms of this Agreement, and includes the court-approved Notice of Class Action Settlement attached  
25 hereto as Exhibit A, together with exclusion and objection forms.

26 2.19. "Notice Response Deadline" means 60 days from the date of the initial mailing of the  
27 Notice Packet, or such other date as set by the Court in the Preliminary Approval Order.

28 2.20. "PAGA Payment" means the amount to be paid to the LWDA and aggrieved employees

1 to settle the claims for which penalties under California’s Private Attorneys General Act (“PAGA”),  
2 California Labor Code §§ 2698 *et seq.*, may be sought or are otherwise available.

3 2.21. “PAGA Aggrieved Employees” means all persons currently or formerly employed as  
4 maintenance technicians (including commercial maintenance technicians, HVAC technicians, and lead  
5 technicians) by Defendant as non-exempt/hourly employees in the State of California who drive  
6 Defendant’s vehicles to and from home to assigned job sites, from March 2, 2019, to July 29, 2021.

7 2.22. “PAGA Period” shall mean the period beginning March 2, 2019, and ending July 29,  
8 2021.

9 2.23. “PAGA Qualifying Days” shall mean the total number of days during which a PAGA  
10 Aggrieved Employee worked for Defendant in California during the PAGA Period.

11 2.24. “Participating Class Member” means any Class Member who has not, by the  
12 Notice Response Deadline, postmarked a request for exclusion from the Settlement. Each Participating  
13 Class Member will be issued an Individual Settlement Payment without the need to return a claim form.

14 2.25. “Plaintiffs” and “Class Representatives” shall mean Pete Homeres, Raul Becerra, Frank  
15 Hall, Charles Peterson, and Gregory Munson.

16 2.26. “Preliminary Approval” and “Preliminary Approval Order” means the order  
17 preliminarily approving this Settlement, which shall, among other things, preliminarily find the  
18 Settlement to be fair, reasonable, and adequate; approve CAC Services Group, LLC as the  
19 Administrator; approve the content and distribution of the Notice Packet to the Class Members; and set  
20 the date for the Final Approval Hearing, as contemplated in Section III of this Agreement.

21 2.27. “Qualifying Days” shall mean the total number of days during which a Class Member  
22 worked for Defendant in California during the Class Period.

23 2.28. “Released Claims” means all claims under the wage and hour laws and regulations of  
24 the state of California that were or could have been asserted based on the facts pleaded in the Class  
25 Action by Plaintiffs, and occurring during the Class Period (defined above), including but not limited to  
26 all statutes mentioned in the Action and corresponding provisions of the relevant California Wage  
27 Order, including but not limited to California Labor Code sections 201-204, 226, 226.3, 226.7, 510,  
28 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, 2802, the Private Attorneys General Act (“PAGA”),

California Labor Code § 2698 *et seq.*, and California’s Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, as related to claims for: overtime; minimum wage; meal period premiums; rest break premiums; wage statements; waiting time penalties; expense reimbursement restitution; civil and statutory penalties; interest; injunctive relief; and attorneys’ fees, costs, and expenses.

2.29. “Released PAGA Claims” shall include all claims under PAGA, California Labor Code sections 2698, *et seq.*, that were or could have been asserted based on the facts and allegations made in the Action as to the Class Members from March 2, 2019 to the date of preliminary approval. Aggrieved employees cannot request exclusion from the Released PAGA Claims and will be paid their pro rata share of the PAGA payment. This release does not release the PAGA claim on behalf of the LWDA.

2.30. “Released Parties” shall mean Defendant EFS and its past, present and future divisions, affiliates, predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents, trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, parents, subsidiaries, and privies.

2.31. “Request for Exclusion” means a written request made by a Class Member to the Administrator seeking to be excluded from the Class, in the manner set forth in Paragraphs 4.8 and 4.9.

2.32. “Service Payment” means a payment, as approved by the Court, to Plaintiffs/Class Representatives Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson in the sum of \$5,000.00 each in consideration of their efforts to initiate and prosecute the Class Actions, work performed, risks for payment of costs in the event of loss, stigma and execution of general releases of all claims each may have against Defendant as more particularly described in Paragraph 5.4. Defendant will not oppose the Service Payment requests in these amounts. Each Plaintiff will be issued an Internal Revenue Service Form 1099 for any Service Payment. The Plaintiffs/Class Representatives agree they are solely responsible for the tax consequences of the Service Payments, if any. In the event that the Court (or any appellate court) awards less than the amount requested for each Service Payment, only the awarded amount shall be paid and shall constitute satisfaction of those obligations and full payment thereunder, and any unawarded portion of the requested Service Payment shall be made a part of the NSF for distribution to Participating Class Members. Service Payments to Plaintiffs are in addition to Individual Settlement Payments that

1 Participating Class Members shall receive under the terms of this Settlement.

2 2.33. "Withholdings and Taxes" means all withholdings from the Individual Settlement  
3 Payments required by law plus all federal, state, and local employment payroll taxes due in regard to  
4 the Individual Settlement Payments, whether owed by a Class Member or by Defendant. Defendant  
5 shall provide the Administrator with an additional amount sufficient to cover Defendant's share of  
6 Withholdings and Taxes arising from the Individual Settlement Payments to be paid to Class Members,  
7 as computed by the Administrator in accordance with Paragraph 4.27. The Administrator shall provide  
8 Defendant all tax calculations for the employer's share of payroll taxes (including but not limited to,  
9 FICA, FUTA and SDI contributions) and total sum due.

#### 10 11 SETTLEMENT TERMS

12 3.1. **Payment of MSA by Defendant.** In full settlement of the Released Claims and  
13 following the Effective Date, Defendant shall deliver the Maximum Settlement Amount (MSA), less  
14 the \$82,750 previously paid by Defendant to some Class Members in connection with earlier individual  
15 settlement agreements in this Action, to the Administrator in accordance with the timeline set forth in  
16 Paragraph 4.37, below. This payment shall consist of the following amounts: (a) the Individual  
17 Settlement Payments to all Class Members, (b) the Attorneys' Fees and Costs Payment, (c) the PAGA  
18 Payment, (d) Plaintiffs' Service Payments, and (e) the Administration Costs. Concurrently with their  
19 delivery of this amount, Defendant shall also deliver to the Administrator Defendant's share of the  
20 employers' Withholdings and Taxes, as calculated by the Administrator based on the wage portion of  
21 the Individual Settlement Payments.

22 3.2. **Attorneys' Fees and Costs Payment.** Class Counsel may request a reasonable award of  
23 Attorneys' Fees and Costs from the Court to compensate them for fees and costs incurred for work  
24 already performed in the Class Action, and the work remaining to be performed in documenting the  
25 Settlement, securing court approval of the Agreement, administering the Settlement, and defending  
26 against any appeals, as well as all associated expenses. The amount of fees and costs awarded to Class  
27 Counsel shall be left to the discretion of the Court, and shall not exceed 33.3% of the Maximum  
28 Settlement Amount, in addition to up to \$15,000 in costs. Defendant will not oppose a reasonable

1 request for attorneys' fees and costs.

2 3.3. Class Counsel will submit an application for Attorneys' Fees and Costs to the Court for  
3 approval prior to the date of the Final Fairness Approval Hearing. The Parties agree that, over and  
4 above the total amount of the court-approved Attorneys' Fees and Costs awarded, each Party, including  
5 all persons eligible to be Class Members, shall bear their own fees and costs relative to the  
6 investigation, filing, prosecution or settlement of the Class Actions, the negotiation, execution, or  
7 implementation of this Agreement, and/or the process of obtaining, administering, or challenging a  
8 Preliminary Approval Order and/or Final Approval Order.

9 3.4. The Parties agree that Class Counsel shall be solely responsible for the division and  
10 distribution of any and all court-approved Attorneys' Fees and Costs awarded in the Class Actions to  
11 Class Counsel.

12 3.5. All claims for attorneys' fees or costs or expenses that Class Counsel, Plaintiffs, and the  
13 Participating Class Members may possess against Defendant have been compromised and resolved in  
14 this Agreement and shall not be affected by any appeal that Class Counsel may file.

15 3.6. The Attorneys' Fees and Costs Payment shall represent payment for all claims for Class  
16 Counsel's attorneys' fees and costs, past and future, incurred in the Action. The Fee and Expense  
17 Award shall be paid from the MSA, and Defendant shall not otherwise be required to pay for any  
18 portion of Plaintiffs' or the Class Members' attorneys' fees, costs, or expenses. The Attorneys' Fee and  
19 Cost payment shall be paid to Class Counsel from the MSA following the Effective Date, in accordance  
20 with Paragraph 4.37, below. An award by the Court of Attorneys' Fees or Costs that is less than the  
21 amounts applied for will not be grounds for Plaintiffs or Class Counsel to challenge or withdraw from  
22 the Settlement.

23 3.7. **Service Payments to Plaintiffs/Class Representatives.** Defendant agrees not to oppose  
24 a Service Payment for each Plaintiff in an amount not to exceed \$5,000.00 for their service in bringing  
25 and prosecuting the Class Action on behalf of the Class. The Service Payments shall be paid to  
26 Plaintiffs from the MSA following the Effective Date, in accordance with Paragraph 4.37 below.

27 3.8. **PAGA Payment.** The Parties agree to seek approval from the Court for a payment of  
28 \$20,000.00 for resolution of the PAGA claims alleged in the Action. The Parties agree that \$15,000.00

(75%) of the PAGA Payment shall be paid to the LWDA and \$5,000.00 (25%) of the PAGA Payment shall remain part of the Net Settlement Fund to be paid to the aggrieved employees. The PAGA Payment shall be paid to the LWDA and the aggrieved employees from the MSA following the Effective Date, in accordance with Paragraph 4.37, below.

**3.9. Interim Stay of Proceedings.** The Parties agree to the entry of a formal stay of all proceedings in the Class Action, except such proceedings as may be necessary to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by the Court.

#### **CLASS SETTLEMENT PROCEDURES**

**4.1. Preliminary Approval.** As soon as practicable after execution of this Agreement, Plaintiffs shall apply for Preliminary Approval of the Settlement. Plaintiffs' application shall request the Court to:

4.1.1. For purposes of Settlement only, conditionally certify the Class Action Settlement;

4.1.2. Preliminarily approve this Agreement as fair, reasonable, and adequate;

4.1.3. Preliminarily approve the Notice of Class Action Settlement attached as Exhibit A;

4.1.4. Approve CAC Services Group, LLC as the Administrator;

4.1.5. Set deadlines for the Administrator to provide the Notice to the Class, and for Class Members to request exclusion or object to the Settlement;

4.1.6. Set the date and time for the Final Fairness/Approval Hearing; and

4.1.7. Stay all other proceedings in the Class Action until Final Approval.

**4.2. LWDA Notice.** The proposed settlement shall be submitted to the LWDA at the same time that it is submitted to the Court, pursuant to Labor Code § 2699(1)(2).

**4.3. Class Notice.** Subject to court approval, the Parties agree that the Administrator shall provide notice to the Class pursuant to the following procedures:

**4.4. Class List and Data.** Within fourteen (14) days following entry of the Preliminary Approval Order, Defendant will produce the Class List and Data to Class Counsel and to the Administrator in a readable Microsoft Excel Spreadsheet which shall include for each Class Member:

(1) full name; (2) most recently known mailing address; (3) employee ID number; (4) last four digits of Social Security Number; (5) dates of employment; (6) total number of days worked during the Class Period.

4.5. **Administrator Duties.** The Administrator's duties shall include, among others: (i) creating a Qualified Gross Settlement Fund, (ii) printing and mailing the Notice Packet to the Class as directed by the Court, and establishing a website domain to host the relevant settlement documents; (iii) taking all steps reasonably necessary to ensure Class Members timely receive the Notice Packet; (iv) calculating the number of Qualifying Days and PAGA Qualifying Days worked by Class Members, including resolving any disputes by Class Members about the number of Qualifying Days they worked during the Class Period and PAGA Qualifying Days they worked during the PAGA Period; (v) taking receipt of and safeguarding the Maximum Settlement Amount; (vi) calculating and distributing Individual Settlement Payments, the PAGA Payment, the Service Payments, and the Attorneys' Fees and Costs Payment, provided such amounts are approved by the Court; (vii) calculating and paying Defendant's share of employer taxes; (viii) issuing IRS Forms W2 and 1099, as applicable, and reporting all Individual Settlement Payments, Service Payments, and the Attorneys' Fee and Costs Payment; and (ix) redistributing sums represented by uncashed checks to class members, together with such other tasks as the Parties may mutually request and agree upon or the Court may order the Administrator to perform.

4.6. The Administrator shall create and maintain a website, which will include the Class Notice, Motions for Preliminary and Final Approval, and Motion for Attorneys' Fees as they become available, until the Effective Date. The Motion for Attorneys' Fees and any related filings shall be available on the website for a reasonable period of time of no less than 15 calendar days prior to the deadline for class members to file an objection to the Settlement.

4.7. The Administrator shall take all reasonable steps to ensure that (a) the highest percentage of Class Members receive the Notice Packet; (b) Class Members who wish to participate in the Settlement are permitted to do so consistent with this Agreement; and (c) it has the most current and accurate addresses for Class Members, including, but not limited to performing an initial National Change of Address database search for all Class Members who are no longer employed by Defendant.

1 In addition, the Administrator shall perform a standard search, also known as “batch,” “skip trace,” or  
2 “credit header” searches, on all addresses returned as undeliverable. The Administrator shall  
3 immediately re-mail the Notice Packet to all updated addresses obtained through its efforts to locate the  
4 most current and accurate addresses for Class Members. Should a Notice Packet associated with a  
5 currently employed Class Member be returned as undeliverable, Defendant will review its records and,  
6 if an updated address is reflected in its records, provide the Administrator with an updated mailing  
7 address for remailing of the Notice Packet. The Administrator shall also provide toll-free telephone  
8 support and a post office box to facilitate Class Member communications; maintain appropriate  
9 databases to fulfill its duties; receive, control, and account for all returned Notice Packets, disputes,  
10 requests for exclusion and objections; calculate the Class Members’ payments; and prepare and deliver  
11 reports to Class Counsel and Counsel for Defendant on a weekly basis that communicate the status of  
12 the notice process, including the number of Notice Packets mailed, returned, searched, and re-mailed as  
13 well as disputes, requests for exclusion, and objections. In addition to the duties identified above, the  
14 Administrator shall prepare final declarations, reports and invoices that accurately describe the notice  
15 process, the level of participation, and actions taken to ensure the best possible notice of the Settlement  
16 was provided to Class Members.

17 **4.8. Mailing of Notice Packet to Class Members.** No later than 14 calendar days following  
18 receipt of the information to be provided under Paragraph 4.4, above, the Administrator shall mail the  
19 Notice Packet to all Class Members, via first class United States mail, using the most current mailing  
20 address. Any Notice Packet returned to the Administrator with a forwarding address shall be  
21 immediately re-mailed by the Administrator. The Administrator shall conduct a skip-trace address  
22 search for any Class Member’s Notice Packet that is returned without a forwarding address and shall,  
23 upon obtaining a new or different address, immediately re-mail the Class Member’s Notice Packet. It  
24 shall be presumed that each and every Class Member whose Notice Packet is not returned to the  
25 Administrator as undeliverable within thirty (30) calendar days after mailing has actually received the  
26 Notice Packet.

27 **4.9. Requests for Exclusion/Opt Outs.** Class Members who wish to be excluded from, or  
28 opt out of, the Settlement must submit to the Administrator, a written, signed request for exclusion

1 postmarked by the Notice Response Deadline.

2       **4.10. Contents of Request.** The request for exclusion must contain (i) the name of this  
3 Action; (ii) the full name, address, and telephone number of the person requesting to be excluded; (iii)  
4 be personally signed by the Class Member seeking to be excluded, and (iv) a statement indicating their  
5 desire to be excluded, such as:

6               “I wish to be excluded from the Settlement of the Action, *Homerus v. EFS*.”  
7

8       **4.11. Timeliness.** For purposes of determining timeliness, a request for exclusion shall be  
9 deemed to have been submitted on the date postmarked by the U.S. Postal Service or other delivery  
10 service. The Administrator shall stamp the date received on the original of any request for exclusion it  
11 receives. Not later than ten (10) calendar days after the Notice Response Deadline, the Administrator  
12 will inform Class Counsel and Counsel for Defendant of the total number of Class Members who  
13 timely submitted valid requests for exclusion.

14       **4.12. Non-Opt Outs Bound.** Each Class Member who does not submit a valid request for  
15 exclusion substantially in compliance with Paragraphs 4.9 and 4.10 by the Notice Response Deadline  
16 shall, absent good cause found by the Court, be bound by the terms of this Agreement, any court order  
17 approving the terms of the Settlement, and the Judgment entered thereon.

18       **4.13. Resolution of Disputes Regarding Opt-Outs.** In the event of any issue over the  
19 completeness, accuracy, timeliness, or validity of a request for exclusion, the Parties shall meet and  
20 confer in good faith for the purpose of resolving the issue and, if the issue cannot be resolved, shall  
21 submit the dispute to the Court for a final and binding determination that shall not be appealable.

22       **4.14. Defendant’s Right to Rescind.** If at least five percent (5%) of the prospective Class  
23 Members request exclusion, then Defendant shall have the option, in its sole discretion, to nullify and  
24 rescind this Agreement, in which case all of Defendant’s obligations under this Agreement shall cease  
25 to be of any force or effect, and this Agreement shall be null and void. If Defendant exercises this  
26 option, it shall provide Plaintiffs with written notice of its election within seven (7) days of the  
27 Administrator informing Class Counsel and Counsel for Defendant of the total number of Class  
28

Members who timely submitted valid requests for exclusion, with a copy to the Administrator, at which point the Parties shall return to their respective positions that existed before the execution of this Agreement, and no term of this Agreement or any draft thereof, or the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding. In the event that the Settlement is rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class or collective action have been met. In such circumstances, Defendant expressly reserve all rights to challenge class certification for any purpose other than settlement purposes in this Class Action, or in any other action, on all available grounds as if no class had been certified for settlement purposes, and no reference to the prior certification of this class, or any documents related thereto, shall be made for any purpose.

4.15. Notwithstanding the foregoing, the Parties agree that in the event this Agreement is rescinded by Defendant pursuant to Paragraph 4.12, Defendant shall pay the expenses incurred by the Administrator through the date of Defendant's withdrawal/termination.

4.16. **Class Size Adjustment.** Conversely, if the class size exceeds the estimated size of 133 individuals by more than 5.0%, Defendant shall increase the Maximum Settlement Amount by that same percentage. For example, if the class size is 10.0% higher than 133 individuals, the MSA shall be increased by 10.0%.

4.17. **Objections.** Only Class Members (i.e. those Class Members who have not excluded themselves from the Settlement) may object to the Settlement.

4.18. **Manner of Objecting.** Class Members who wish to object to the Settlement must send to the Court, with a copy sent to the Administrator, a personally signed, written statement objecting to the Settlement, setting forth their name, address, telephone number and the basis for their objections, postmarked on or before the Notice Response Deadline. Class Members who timely submit a signed objection to the Settlement may, but are not required to, appear at the Final Approval Hearing. No later than ten (10) calendar days from the Notice Response Deadline, the Administrator shall provide copies of all objections received from Class Members, along with documents showing the postmarked date for

each objection, to Counsel for all Parties.

4.19. **Plan of Allocation and Calculation of Settlement Awards.** The Administrator shall be responsible for the allocations of the Net Settlement Fund to Class Members. The Individual Settlement Payments to Class Members will be paid on a pro rata basis as follows:

4.20. Before computing the amounts of Individual Settlement Payments to be paid to Class Members, the Administrator shall determine the amount of the Net Settlement Fund by deducting from the Maximum Settlement Amount, the following court-approved sums: (a) the Attorneys' Fees and Costs Payment, (b) the portion of the PAGA Payment to be paid to the LWDA, (c) the Service Payments, (d) the Administration Costs; and (e) previously paid settlement amounts of \$82,750 made by Defendant to some Class Members in connection with individual settlement agreements in this Action.

4.21. To determine each Class Member's Individual Settlement Payment, the Administrator shall assign each Class Member one credit for each Qualifying Day worked during the Class Period and one credit for each PAGA Qualifying Day worked during the PAGA Period for PAGA Aggrieved Employees.

4.22. The Administrator will then divide the PAGA settlement portion of the Net Settlement Fund (*i.e.* \$5,000) by the total number of PAGA Qualifying Days worked by PAGA Aggrieved Employees during the PAGA Period, resulting in a value for each credit. The Administrator will then take the credit value and multiply it by the number of credits awarded to each Aggrieved PAGA Employee. Any Aggrieved PAGA Employee who has been awarded less than twenty-five credits will receive twenty-five (25) credits. In the event that Class Members elect to exclude themselves from the Class, they will still be entitled to their portion of the PAGA settlement amount.

4.23. Separately, the Administrator will divide the total of the Net Settlement Fund, minus the \$5,000 PAGA settlement portion, by the total number of Qualifying Days worked by Class Members during the Class Period, resulting in a value for each credit. The Administrator will then take the credit value and multiply it by the number of credits awarded to each Class Member. Any Class Member who has been awarded less than twenty-five credits will receive twenty-five (25) credits. In the event that Class Members elect to exclude themselves from the Class, they will no longer be entitled to their

1 portion of the non-PAGA settlement amount, which amount will be returned to the Net Settlement  
2 Fund.

3 4.24. Finally, the Administrator shall adjust the individual settlement amounts, so that  
4 Participating Class Members who previously received money from Defendant in conjunction with a  
5 prior individual settlement agreement (“Signers”) shall ultimately recover no more and no less than  
6 those Participating Class Members who did not (“Non-Signers”). For example, if John Clark, a Non-  
7 Signer, and Craig Clark, a Signer who previously received \$750, were both entitled to \$1,250 under the  
8 above allocation, John Clark would receive \$1,250 and Craig Clark would receive an additional \$500  
9 (for a total of \$1,250 for both).

10 4.25. In order to determine the amount of the Individual Settlement Payment to which each  
11 Class Member is entitled, the Administrator shall add the amounts calculated in Paragraphs 4.22 and  
12 4.23 above, based on the information provided by Defendant pursuant to Paragraph 4.4. In the event a  
13 dispute arises with respect to an Individual Settlement Payment, the Administrator shall make the final  
14 and binding determination of the amount to be awarded, which shall not be appealable.

15 4.26. In accordance with both state and federal tax laws, the Administrator shall withhold such  
16 sums from each Class Member’s Individual Settlement Payment as is required in order to comply with  
17 the same. The Administrator shall provide each Class Member with appropriate documentation setting  
18 forth the amount of any tax, or other payment withheld, and employer contribution made, in accordance  
19 with state and federal tax requirements.

20 4.27. **No Effect on Benefits.** This Agreement and any payments under this Agreement shall  
21 not have any effect on the eligibility or calculation of employee benefits with respect to the Class  
22 Members. This Agreement does not represent any modification of any previously credited hours of  
23 service, income, or other eligibility criteria under any employee pension benefit plan, employee welfare  
24 benefit plan, or other program or policy sponsored by any of the Released Parties.

25 4.28. Likewise, no payment provided under this Agreement shall be considered  
26 “compensation” or “annual earnings for benefits” in any year for purposes of determining eligibility  
27 for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan, or  
28 other program or policy sponsored by any of the Released Parties.

1           4.29. **Taxes.** The payment by Defendant pursuant to this Agreement is for alleged failure to  
2 pay compensation due, interest on the compensation sum, penalties regarding the compensation sum,  
3 and all other claims as set forth in the Class Action Complaint. The Parties agree, for purposes of this  
4 Settlement, that Individual Settlement Payments be allocated as follows: one-third (33.33%) to wages  
5 subject to withholdings, for which IRS W-2 Forms shall be issued; one-third (33.33%) to interest and  
6 one-third (33.33%) to penalties under the California Labor Code, for which IRS 1099 Forms shall be  
7 issued. In addition to the Maximum Settlement Amount, Defendant shall pay for employer-side payroll  
8 taxes.

9           4.30. **Class Member Obligations.** Each Class Member receiving a Settlement Award shall be  
10 responsible for paying his or her share of applicable federal, state, and local income taxes on all  
11 amounts such person receives pursuant to this Agreement.

12           4.31. **Administrator Responsibilities Regarding Taxes.** It shall be the responsibility of the  
13 Administrator or its designee to timely and properly withhold all applicable Withholdings and Taxes  
14 from Class Members based on their Individual Settlement Payments and to prepare and deliver the  
15 necessary tax documentation for signature by all necessary parties and, thereafter, to pay the  
16 Withholdings and Taxes to the appropriate authorities, and to file all necessary information and other  
17 tax returns. Payments to Class Members, Plaintiffs, and Class Counsel pursuant to this Agreement  
18 shall be reported on IRS Forms W-2 or 1099-MISC as applicable, with copies provided to the  
19 respective Class Members, Plaintiffs, Class Counsel, and all applicable governmental entities as  
20 required by law, and also to Defendant. All Withholdings and Taxes deposited with the applicable  
21 governmental entities in accordance with this Agreement, other than Defendant's share of Withholdings  
22 and Taxes arising from the Individual Settlement Payments, shall be part of, and paid out of, the  
23 Individual Settlement Payments to each Participating Class Member.

24           4.32. **Tax Expenses Resulting from Administration.** All reasonable and direct expenses and  
25 costs incurred by or at the direction of the Administrator in connection with the administration of the  
26 Settlement (including, without limitation, expenses of tax attorneys and/or accountants incurred in  
27 providing advice to the Administrator, and mailing and distribution costs and expenses relating to the  
28 filing (or failure to file) the informational and other tax returns described above) shall be considered a

1 cost of administration of the Settlement and shall be part of the Administration Costs. Any funds  
2 allocated for the Administration Costs, but not paid to the Administrator, shall be returned to the Net  
3 Settlement Fund and distributed to Participating Class Members pro rata.

4 **4.33. Employer's Share of Withholdings and Taxes.** The employer's share of Withholdings  
5 and Taxes, including without limitation statutory Federal and California payroll and employment taxes  
6 arising from wage payments to Class Members under this Agreement, shall be paid by Defendant in  
7 addition to the Maximum Settlement Amount.

8 **4.34. Final Approval and Entry of Judgment.** Following the Notice Response  
9 Deadline and before the Final Approval Hearing, on or before the date set by the Court, Plaintiffs shall  
10 move for Final Approval of the Settlement. The Final Judgment and Order Approving Settlement shall  
11 be substantially the same as the proposed order attached as Exhibit B.

12 **4.35. Calculation of Defendant's Share of Withholdings and Taxes.** At least fourteen (14)  
13 calendar days prior to the hearing for the Final Approval of the Settlement, the Administrator shall  
14 calculate and advise Counsel for Defendant of the amount of Defendant's share of Withholdings and  
15 Taxes as set forth in Paragraphs 4.31 and 4.33 of this Agreement. In the event Defendant's share of  
16 Withholdings and Taxes must be revised based on the Court's Final Approval of the Settlement, the  
17 Administrator shall calculate and advise Counsel for Defendant of the revised amount of Defendant's  
18 share of Withholdings and Taxes (as set forth in Paragraph 4.26) no later than two days after the Final  
19 Approval of the Settlement.

20 **4.36. Distribution of Settlement Awards.** After the Effective Date, the Individual Settlement  
21 Payments shall be distributed to Class Members in accordance with the procedures set forth below:

22 **4.37. Remittance of Remaining Settlement Amount.** Within five (5) calendar days of the  
23 Final Approval Order, Defendant will remit the Remaining Settlement Amount to the Administrator for  
24 the establishment of the Qualified Gross Settlement Fund. Defendant shall also simultaneously deliver  
25 to the Administrator Defendant's share of payroll taxes, including FICA, FUTA and SDI contributions,  
26 provided that, at least fourteen (14) calendar days prior to the hearing for the Final Approval of the  
27 Settlement, the Administrator has calculated and advised Counsel for Defendant of the amount of  
28 Defendant's share of Withholdings and Taxes.

1           **4.38. Delivery of Payments.** Within seven (7) calendar days from the Effective Date, the  
2 Administrator shall establish the Qualified Gross Settlement Fund and distribute (a) the Attorneys' Fees  
3 and Costs Payment to Class Counsel, (b) the Individual Settlement Payment checks to Class Members,  
4 (c) the PAGA Payment to the LWDA, (d) the Service Payments to Plaintiffs, and (e) the Withholdings  
5 and Taxes arising from the Individual Settlement Payments to the appropriate government entities.  
6 Also, within seven (7) calendar days from the Effective Date, the Administrator shall provide Class  
7 Counsel and Counsel for Defendant a written report listing each Class Member, the amount of the  
8 Individual Settlement Payment to be paid to each Class Member, and the amount of Withholdings and  
9 Taxes for each such Settlement Award. Class Counsel shall hold the information contained in this  
10 report in strictest confidence and not use or disclose it for any purpose, except on the written  
11 authorization of counsel for Defendant or by order of the Court. Additionally, by no later than the date  
12 set by the Court in its Final Approval order and if none set, by no later than five (5) days prior to the  
13 Compliance Hearing, the Administrator shall file a report with the Court setting forth (1) the total  
14 amount of money paid to Class Members, (2) the PAGA Payment to the LWDA and proof of  
15 submission, (3) the Service Payments paid to Plaintiffs, (4) the payment made to itself for the  
16 Administration Costs, and (5) the Attorneys' Fees and Costs paid to Class Counsel.

17           **4.39. Negotiation of Individual Settlement Payment Checks.** Checks sent to Class  
18 Members under this Agreement shall remain valid and negotiable for 180 calendar days from the date  
19 of their mailing, and thereafter may be automatically canceled if not cashed by the payee within that  
20 time. The Administrator will provide notice to Class Counsel of any uncashed checks, and the  
21 Administrator shall have responsibility to attempt to locate the impacted Class Members, including by  
22 conducting skip traces on uncashed checks, and to re-issue checks with an expiration date within 180  
23 days following the re-issuing of the checks.

24           **4.40.** If a Class Member has not cashed a check by the 30th day from the date of the check's  
25 issuance, the Administrator shall send a postcard to the Class Member to remind each to cash their  
26 check before the void date. Administration of the Settlement shall be completed no later than 180 days  
27 from the Effective Date.

28           **4.41.** In the event any Class Member(s) cannot be located within 180 days of date of mailing

1 of the initial settlement checks, uncashed settlement check(s) will be redistributed among the remaining  
2 Participating Class Members.

3       **4.42. Questions and Disputes.** In the event that questions or disputes arise regarding the  
4 entitlement of any Class Member under this Agreement, counsel for each of the Parties shall cooperate  
5 to provide to counsel for the other Party and the Administrator all available information reasonably  
6 necessary to resolve them. Such information shall be provided in either electronic form or hard copy, as  
7 the Administrator may reasonably request. If the Parties cannot resolve any dispute concerning the  
8 entitlement of any Class Member under this Agreement, the dispute(s) shall be submitted to the  
9 Administrator for resolution.

10       **4.43. Notification and Certification by the Administrator.** The Administrator shall keep  
11 Counsel for Defendant and Class Counsel apprised of the status of the Settlement administration  
12 process and its distribution of Individual Settlement Payments. Upon completion of administration of  
13 the Settlement, the Administrator shall provide a detailed, written certification of such completion to  
14 the Court and counsel for the Parties.

15       **4.44. Nullification of Agreement if Settlement Not Approved.** In the event: (a) the Court  
16 does not preliminarily approve the Settlement as provided herein; (b) the Court does not finally approve  
17 the Settlement as provided herein; (c) the Court does not enter the Judgment as provided herein; or  
18 (d) the Settlement does not become final for any other reason, including the exercise of Defendant's  
19 right to reject the Settlement under Paragraph 4.12, above, this Agreement shall be null and void *ab*  
20 *initio* (with the exception of this Section and Paragraph 4.13 regarding payment to Administrator) and  
21 any order or Judgment entered by the Court in furtherance of this Settlement shall be treated as  
22 withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to their  
23 respective statuses as of April 29, 2021. In such cases, Defendant on the one hand, and Plaintiffs on the  
24 other hand, will remain equally (50%) responsible for the fees incurred to that date by the  
25 Administrator, except that Defendant shall be solely responsible for the fees incurred by the  
26 Administrator in the event Defendant exercise their option to rescind this Agreement pursuant to  
27 Section 4.13 above. In the event an appeal is taken from the Judgment, or any other appellate review is  
28 sought before the Effective Date, administration of the Settlement shall be stayed pending final

1 resolution of the appeal or other appellate review.

## 2 ENTRY OF JUDGMENT AND RELEASES

3 5.1. **Obtaining Approval.** As soon as practicable after execution of this Agreement, Class  
4 Counsel shall, with the cooperation of Counsel for Defendant as reasonably requested by Class  
5 Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of the Settlement  
6 by the Court, including responding to any objectors, intervenors, or other persons or entities seeking to  
7 preclude approval of this Agreement.

8 5.2. **Plaintiffs' Waiver of Right to Opt Out and to Object.** By signing this Agreement,  
9 named Plaintiffs agree to be bound by the terms herein and further agree not to request exclusion from,  
10 or to object to any of the terms of, this Agreement. Any such request for exclusion or objection shall,  
11 therefore, be void and of no force or effect.

12 5.3. **The Class Release.** Participating Class Members agree to release, waive, not to sue, file  
13 an administrative charge/complaint, or otherwise make any claim against any of the Released Parties  
14 seeking any form of relief, remedy, or recovery based on any of the Released Claims. It is the intent of  
15 the Parties that the Final Approval Order entered by the Court shall have full *res judicata* and collateral  
16 estoppel effect, and that it be final and binding upon Participating Class Members regarding the  
17 Released Claims.

18 5.4. **The PAGA Release.** The PAGA Release shall apply to all Aggrieved PAGA  
19 Employees, including those who opt out of the Class.

20 5.5. **Named Plaintiffs' General Release.** Upon the Effective Date, and as a condition to  
21 obtaining the Plaintiffs' Service Payments, named Plaintiffs Pete Homeres, Raul Becerra, Frank Hall,  
22 Charles Peterson, and Gregory Munson, and each of their successors, assigns, heirs, personal  
23 representatives, and all those who claim through each of them, or who assert claims on their behalf,  
24 also agree to a general release of any and all claims against the Released Parties, and Plaintiffs shall be  
25 deemed to have, and by operation of the Judgment shall have, expressly released, waived, and  
26 relinquished any and all rights to allege or seek any form of relief, remedy, or recovery based on any of  
27 the Released Claims. Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and  
28 Gregory Munson agree not to sue or otherwise make a claim or charge against any of the Released

Parties for any of the Released Claims. Additionally, Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson agree that, upon the Effective Date, they expressly release and waive any and all claims, demands, rights, liabilities, and causes of action each has had or ever had against any of the Released Parties, whether for economic damages, noneconomic damages, punitive damages, penalties, restitution, injunctive or declaratory relief, interest, attorneys' fees, costs, or any other forms of monetary or non-monetary relief in any way arising out of or relating to any facts, transactions, events, policies, practices, occurrences, acts, conduct, disclosures, statements, omissions, or failures to act at any time during the Class Period, including, but not limited to, any claims arising from or related to their employment or separation of employment with Defendant, contractual and/or quasi-contractual relationship with the Defendant and the Released Parties, or any of them; any allegations as to disputed or unpaid wages, remuneration, and/or other compensation, due by operation of statute, ordinance, contract, or quasi-contract; any federal, state, or local law prohibiting discrimination or retaliation on the basis of age, race, color, ancestry, religion, disability, sex, national origin, or citizenship or any other protected category, including, without limitation, claims under Title VII, the California Fair Employment and Housing Act, the California Labor Code, FLSA, the California IWC Orders, the Employee Retirement Income Security Act, California Labor Code, and the Americans With Disabilities Act or any other similar statutes whatever the city, county, state, or country of enactment; any claims under the Family and Medical Leave Act of 1993 and/or the California Family Rights Act; any tort or common law claims, and any transactions, incidents, events, conduct, occurrences, acts, statements, disclosures, or omissions, occurring during the Class Period.

5.6. This general release by Plaintiffs shall become effective upon the Effective Date and include all statutory claims, common law claims (including, but not limited to, those sounding in contract, tort, and equity), tort claims, and claims for compensation to the fullest and broadest extent permitted by law.

5.7. **Waiver of California Civil Code Section 1542.** Named Plaintiffs each acknowledge that the general release herein includes potential fact, claims, and injuries/harm that may not be known or suspected by them to exist, and they hereby expressly and affirmatively waive and relinquish any and all rights and benefits that they may otherwise have relating to the claims released in Paragraph 5.4

pursuant to California Civil Code section 1542, and any similar law of any state or territory of the United States. California Civil Code section 1542 states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

#### ADDITIONAL PROVISIONS

6.1. **No Admission of Liability.** Defendant have denied and continue to deny each and every claim and contention alleged in this Action, and all of the claims and contentions made by Plaintiffs in this Action. Defendant deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action, and believe they did not violate any law, and that they also have valid defenses to the alleged claims. This Agreement reflects the compromise and settlement of disputed claims between the Parties, and their provisions and any and all drafts, communications, or discussions relating thereto do not constitute, are not intended to constitute, and will not under any circumstances be deemed to constitute an admission by any Party as to the merits, validity, or accuracy of any of the allegations or claims in the Action, nor a waiver of any defense. The Parties further acknowledge and agree that this Settlement shall not be used to evidence an admission that class certification is and/or was proper for litigation purposes in the Action.

6.2. **Limitation on Effect of Certification.** The certification of the Class – for settlement purposes only – shall not constitute, in this or any other proceeding, an admission of any kind by Defendant, including without limitation, that certification of a class or collective action for trial purposes is appropriate or proper or that Plaintiffs could establish any of the requisite elements for class or collective treatment of any of the claims in the Action. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated or rendered null and void, the certification of the Class shall be automatically vacated and shall not constitute evidence or a binding determination that the requirements for certification of a class or collective action for trial purposes in the Class Action, or in any other actions are satisfied. In such circumstances, Defendant expressly reserves all rights to challenge class certification for any purpose other than settlement purposes in the Action or in any

1 other action on all available grounds as if no class had been certified for settlement purposes, and no  
2 reference to the prior certification of this Class, or any documents related thereto, shall be made for any  
3 purpose.

4       **6.3. Parties Represented by Counsel.** The Parties hereby acknowledge that they  
5 have been represented in negotiations for and in the preparation of this Agreement by independent  
6 counsel of their own choosing, they have read this Agreement and have had it fully explained to them  
7 by such counsel, and they are fully aware of the contents of this Agreement and of its legal effect.

8       **6.4. Construction.** The Parties agree that the terms and conditions of this  
9 Settlement are the result of lengthy, intensive arm's-length negotiations between the  
10 Parties, and that this Settlement shall not be construed in favor of or against any Party by  
11 reason of the extent to which any Party or his, her, or its counsel participated in the drafting of this  
12 Settlement.

13       **6.5. Voluntary Agreement.** This Agreement is executed voluntarily and without duress or  
14 undue influence on the part of or on behalf of either Party, or of any other person, firm, or entity. Each  
15 Party has made such investigation of the facts pertaining to this Agreement and of all other matters  
16 pertaining hereto as he, she, or it deems necessary.

17       **6.6. Notices.** The Parties, Class Counsel, and Counsel for Defendant acknowledge and agree  
18 that, for the purposes of any claims, actions, or proceedings arising out of this Agreement, notice  
19 provided to Class Counsel shall be deemed notice to Plaintiffs and to Class Members. All notices,  
20 requests, demands, and other communications required to be given under this Agreement shall be in  
21 writing and shall be delivered personally, faxed, emailed or mailed, postage prepaid, by first class  
22 United States mail, addressed as follows:

23  
24       **To Plaintiffs and Class Counsel:**

25       HADSELL STORMER RENICK & DAI LLP  
26       Randy Renick  
27       Cornelia Dai  
28       128 N. Fair Oaks Avenue  
      Pasadena, CA 91103  
      Telephone: (626) 585-9600 / Fax: (626) 577-7079

1 THE SAACKE LAW GROUP  
2 William C. Saacke  
3 6816 E. Katella Rd, Ste. 1020  
4 Cypress, CA 90630  
Phone: (714) 875-5130  
Fax: (310) 791-2247

5 **To Defendant and Defendant's Counsel:**

6 LITTLER MENDELSON, P.C.  
7 Joshua Kienitz  
8 Maria Harrington  
9 Jordan Goldschmidt  
10 1255 Treat Boulevard  
Suite 600 Walnut Creek, CA 94597  
Telephone: 925.932.2468 / Fax: 925.946.9809

11 6.7. **Mutual Confidentiality.** Class Counsel and the Named Plaintiffs shall not issue any  
12 press release or press statement, initiate media coverage, or respond to any media inquiries regarding  
13 any of the Released Claims against Defendants or the Released Parties, or this Settlement Agreement.  
14 Any website or social media posting by Class Counsel will refer to Defendant's name simply as  
15 "Confidential." Class Counsel agreed to limit its communications with Class Members to issues related  
16 to this Action and its resolution. This term shall in no way impede and/or impair Class Counsel and/or  
17 the Plaintiffs from fulfilling their obligations to the Class, or their obligations to obtain preliminary and  
18 final approval of the Settlement.

19 6.8. **Authorization.** The Parties represent and warrant that each signatory  
20 hereto has the full right and authority to enter into this Agreement and bind the Party on whose behalf  
21 he, she, or it has executed this Agreement.

22 6.9. **Agreement Binding on Successors in Interest.** This Agreement shall be binding on  
23 and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the  
24 Parties.

25 6.10. **Time Periods.** The time periods and dates set forth in this Agreement with respect to the  
26 giving of notices and hearings are subject to approval and modification by the Court or the written  
27 stipulation of counsel for the Parties.

28 6.11. **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to

1 accomplish the terms of this Agreement, including, but not limited to, execution and delivery of any  
2 and all additional papers, documents, and other assurances, and taking such other action that may be  
3 reasonably necessary to implement the terms of this Agreement. The Parties and their counsel shall use  
4 their best efforts, including all efforts contemplated by this Agreement and any other efforts that may  
5 become necessary by order of the Court, to effectuate this Agreement and the terms set forth herein.

6       **6.12. Entire Agreement.** Exhibits to this Agreement are integral parts of this Agreement and  
7 are hereby incorporated and made a part of the Agreement. This Agreement contains the entire  
8 agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their  
9 agreement with respect to the subject matter hereof. This Agreement is executed without reliance upon  
10 any promise, representation, or warranty by either Party or any representative of a Party, other than  
11 those expressly set forth herein. Any inconsistency between this Agreement and the attached Exhibits  
12 will be resolved in favor of this Agreement.

13       **6.13. Headings.** The various headings used in this Agreement are solely for the convenience  
14 of the Parties and shall not be used to interpret this Agreement.

15       **6.14. Amendment and Modification.** Except as expressly provided in  
16 Section 4.12, above, with respect to time periods and dates set forth herein, this Agreement may not be  
17 amended, altered, or modified except in writing and signed by the Parties hereto, their successors in  
18 interest, or their duly authorized representatives, and approved by the Court.

19       **6.15. Governing Law.** This Agreement is entered into in accordance with the laws of the  
20 State of California and shall be governed by and interpreted in accordance with those laws.

21       **6.16. Jurisdiction of the Court.** Any dispute regarding the interpretation or validity or  
22 otherwise arising out of this Agreement, or relating to the Action or the Released Claims, shall be  
23 subject to the exclusive jurisdiction of the Court. Plaintiffs, Class Members, and Defendant agree to  
24 submit to the personal and exclusive jurisdiction of the Court for the purpose of resolving any such  
25 dispute. Following the Effective Date, the Court shall retain jurisdiction solely with respect to the  
26 interpretation, implementation, and enforcement of the terms of this Agreement and all orders and  
27 judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction  
28 of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this

1 Agreement and all orders and judgments entered in connection therewith.

2       **6.17. Agreement Constitutes a Complete Defense.** To the extent permitted by law, this  
3 Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that  
4 may be instituted, prosecuted, or attempted in breach of or contrary to any term of this Agreement.

5       **6.18. Signatures.** Signature by facsimile, electronic signatures, or in Portable Document  
6 Format (PDF) via electronic mail shall have the same force and effect as original signatures.

7 ///

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6.19. **Execution Date and Execution in Counterparts.** This Agreement shall be deemed executed and enforceable upon the last date of signature of all of the undersigned. The Parties may execute this Agreement in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument having the same force and effect as if all Parties had signed the same instrument.

IN WITNESS THEREOF, the Parties hereto have so agreed.

Dated: 12/10/2021

**THE SAACKE LAW GROUP**

DocuSigned by:

*William C. Saacke*

36746356049148A...

William C. Saacke

Attorneys for Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson

Dated: 12/15/2021

**HADSELL STORMER RENICK & DAI LLP**

DocuSigned by:

*Randy Renick*

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Randy Renick

Attorneys for Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson

Dated: \_\_\_\_\_

**LITTLER MENDELSON, P.C.**

\_\_\_\_\_  
Maria R. Harrington

Joshua D. Kienitz

Jordan E. Goldschmidt

Attorneys for Defendant EMCOR Facilities Services, Inc., an Ohio Corporation

1           6.19. **Execution Date and Execution in Counterparts.** This Agreement shall be deemed  
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4 together shall constitute one and the same instrument having the same force and effect as if all Parties  
5 had signed the same instrument.

6 IN WITNESS THEREOF, the Parties hereto have so agreed.

7  
8 Dated: \_\_\_\_\_

**THE SAACKE LAW GROUP**

9  
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11 \_\_\_\_\_  
12 William C. Saacke  
13 Attorneys for Plaintiffs Pete Homeres, Raul Becerra, Frank  
14 Hall, Charles Peterson, and Gregory Munson

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16 Dated: \_\_\_\_\_

**HADSELL STORMER RENICK & DAI LLP**

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18 \_\_\_\_\_  
19 Randy Renick  
20 Attorneys for Plaintiffs Pete Homeres, Raul Becerra,  
21 Frank Hall, Charles Peterson, and Gregory Munson

22 Dated: December 13, 2021

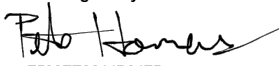
**LITTLER MENDELSON, P.C.**

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24 \_\_\_\_\_  
25 Maria R. Harrington  
26 Joshua D. Kienitz  
27 Jordan E. Goldschmidt  
28 Attorneys for Defendant EMCOR Facilities Services,  
Inc., an Ohio Corporation

1 Dated: 12/10/2021  
2 \_\_\_\_\_

**Pete Homeres**

DocuSigned by:

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Pete Homeres, Plaintiff

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5 Dated: 12/14/2021  
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**Raul Becerra**

DocuSigned by:

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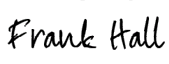
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Raul Becerra, Plaintiff

8 Dated: 12/11/2021  
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**Frank Hall**

DocuSigned by:

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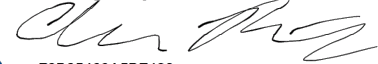
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Frank Hall, Plaintiff

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**Charles Peterson**

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Charles Peterson, Plaintiff

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**Gregory Munson**

DocuSigned by:

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Gregory Munson, Plaintiff

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21 Dated: \_\_\_\_\_  
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**EMCOR Facilities Services, Inc., an Ohio Corporation**

23 By: \_\_\_\_\_  
24 Mike McElrath, President  
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26  
27  
28

1 Dated: \_\_\_\_\_

**Pete Homeres**

2  
3 \_\_\_\_\_  
4 Pete Homeres, Plaintiff

5 Dated: \_\_\_\_\_

**Raul Becerra**

6  
7 \_\_\_\_\_  
8 Raul Becerra, Plaintiff

9 Dated: \_\_\_\_\_

**Frank Hall**

10  
11 \_\_\_\_\_  
12 Frank Hall, Plaintiff

13 Dated: \_\_\_\_\_

**Charles Peterson**

14  
15 \_\_\_\_\_  
16 Charles Peterson, Plaintiff

17 Dated: \_\_\_\_\_

**Gregory Munson**

18  
19 \_\_\_\_\_  
20 Gregory Munson, Plaintiff

21 Dated: 13 DEC '21

**EMCOR Facilities Services, Inc., an Ohio Corporation**

22 By: \_\_\_\_\_

23 Mike McElrath, President

# EXHIBIT A

***Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson***  
***(“Plaintiffs”) v. EMCOR Facilities Services, Inc. (“Defendant” or “EFS”)***  
**Superior Court of California, County of Orange**  
**Case No. 30-2020-01136058-CU-OE-CXC**

*A court authorized this Notice. This is not a solicitation.  
This is not a lawsuit against you and you are not being sued.  
However, your legal rights are affected whether you act or do not act.*

**NOTICE OF CLASS ACTION SETTLEMENT**

To: All persons currently or formerly employed as non-exempt hourly maintenance technicians (including commercial maintenance technicians, HVAC technicians, and lead technicians) by EFS at any point during the period from March 2, 2016, through July 29, 2021.

YOU RECEIVED THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A CLASS MEMBER. AS A CLASS MEMBER, YOU DO NOT NEED TO DO ANYTHING TO RECEIVE A PAYMENT DESCRIBED IN THIS NOTICE.

THE COURT HAS NOT DETERMINED THAT EFS VIOLATED THE LAW. THE TWO SIDES DISAGREE ON WHETHER THE PLAINTIFFS OR EFS WOULD HAVE PREVAILED IF THE CASE HAD GONE TO TRIAL. EFS DENIES THAT IT VIOLATED ANY LAWS.

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING</b>                                                  | To receive your Settlement Payment, you do not need to do anything. Your Individual Settlement Payment will be automatically mailed to you after the Court grants final approval of the Settlement. You will give up your right to sue EFS separately about the legal claims in this Lawsuit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>CHANGE CONTACT AND ADDRESS INFORMATION</b>                      | Update your personal information if it changes to ensure your check is mailed to the correct address.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>EXCLUDE YOURSELF</b>                                            | You may exclude yourself (“opt out”) from the Settlement if you do not wish to participate in the Settlement. If you exclude yourself, you will not receive the full amount of your Individual Settlement Payment. This is the only option that allows you to keep open the possibility of pursuing claims (in your own lawsuit) against EFS for the same wrongs alleged in this Lawsuit.<br>If you opt-out, you will not receive the full amount of the Individual Settlement Payment. Instead, you will be entitled to a lesser amount only that corresponds to the settlement of claims for civil penalties under PAGA. Class members cannot opt-out of the settlement of these PAGA claims and are entitled to their PAGA settlement payments regardless of whether they submit an exclusion request. |
| <b>OBJECT</b>                                                      | Send a written objection to the Claims Administrator if you think the Settlement is not fair. You may also ask to speak in the court proceedings about why you think the Settlement is not fair. <b><u>NOTE:</u></b> If you ask to exclude yourself from the Settlement, you cannot also object.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

- **YOUR RIGHTS AND OPTIONS – AND THE DEADLINES TO EXERCISE THEM – ARE EXPLAINED IN THIS NOTICE.**
- **EFS SUPPORTS THE SETTLEMENT AND WILL NOT RETALIATE IN ANY MANNER AGAINST ANY CLASS MEMBER RELATED TO THIS ACTION.**

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## BASIC INFORMATION

### 1. Why did I get this Notice?

A proposed settlement (“Settlement”) has been reached in the class action, *Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson v. EMCOR Facilities Services, Inc.*, Superior Court of California, County of Orange, Case No. 30-2020-01136058-CU-OE-CXC (“Class Action” or “Lawsuit”). If the Court approves the Settlement, the Settlement will resolve all claims in the Class Action.

The purpose of this Notice is to inform you about the proposed Settlement and to explain your rights and options with respect to the Class Action and the Settlement.

You received this Notice because EFS’s records identify you as a current or former employee who worked for EFS as a non-exempt maintenance technician (including commercial maintenance technician, HVAC technician, or lead technician) at any point during the period from March 2, 2016, through July 29, 2021, whichever is earlier (“Class” or “Class Members”).

### 2. How much will my Settlement Payment be?

95% of the Settlement has been allocated to the wage and hour claims and 5% of the Settlement has been allocated to the PAGA claims.

**Wage and Hour Allocation Formula.** EFS’s records indicate that you worked for EFS as a non-exempt maintenance technician in California at some point during the period from March 2, 2016, through July 29, 2021 (the “Class Period”). Based on EFS’s records, you worked \_\_\_\_ days. You will receive one Credit for each day you worked during the Class Period. Any Class Member who has been awarded less than twenty-five (25) Credits will receive an Individual Settlement Payment of twenty-five (25) Credits.

**PAGA Allocation Formula.** Only “PAGA Aggrieved Employees,” which are those Class Members who worked during the time period of March 2, 2019, to July 29, 2021 (“PAGA Period”), shall receive a PAGA Payment. EFS’s records indicate that you worked for EFS as a non-exempt maintenance technician in California during this period. “PAGA Qualifying Days” shall mean the total number of days during which a PAGA Aggrieved Employee worked for Defendant in California during the PAGA Period. Based on EFS’s records, you worked \_\_\_\_ PAGA Qualifying Days. You will receive one Credit for each PAGA Qualifying Day. Any Class Member who has been awarded less than twenty-five (25) Credits for PAGA Qualifying Days will receive twenty-five (25) Credits.

To determine each PAGA payment, the Administrator will divide the PAGA settlement portion of the Net Settlement Fund (\$5,000) by the total number of PAGA Qualifying Days worked by PAGA Aggrieved Employees during the PAGA Period, resulting in a value for each credit. The Administrator will then take the credit value and multiply it by the number of credits awarded to each Aggrieved PAGA Employee. Any Aggrieved PAGA Employee who has been awarded less than twenty-five credits will receive twenty-five (25) credits. In the event that Class Members elect to exclude themselves from the Class, they will still be entitled to their portion of the PAGA settlement amount.

**Your Allocation.** Based on the number of days worked during the Class Period indicated by Defendant’s records, your share of the wage and hour portion of the Settlement, **before** deductions for withholding and taxes, is estimated to be \$ \_\_\_\_\_. Based on the number of PAGA Qualifying Days indicated by Defendant’s records, your share of the PAGA settlement portion, **before** deductions for withholding and taxes, is estimated to be

\$ \_\_\_\_\_. These estimates are based on the calculations described herein. The actual amount you receive may be more or less than the estimated amount shown, depending on a number of factors, including whether other Class Members request exclusion from the Settlement and how much the Court approves in attorneys' fees, litigation expenses, and other costs of suit.

### **3. What is this Lawsuit about?**

Plaintiffs allege, in part, that EFS violated California's wage and hour laws by failing to pay them for all hours worked (including but not limited to all time spent driving EFS-issued vehicles to and from home); by failing to pay them for overtime hours; by not providing them with rest breaks; by not providing them with meal breaks; by failing to reimburse them for business expenses; and by failing to provide accurate wage statements. In addition to alleging violations of the California Labor Code, Plaintiffs also have asserted claims under California Business & Professions Code section 17200 and the Labor Code Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698 *et seq.*, based on the same alleged Labor Code violations.

EFS disagrees with Plaintiffs' interpretation of rest-breaks law, denies all allegations in the Lawsuit, and contends it has complied with California law at all times. The Settlement is not an admission of any wrongdoing by EFS or an indication that any law was violated. EFS is confident it has strong legal and factual defenses to these claims, but both sides recognize the risks and expenses associated with continued litigation.

The Settlement is the result of a mediation conducted on March 15, 2021, by an experienced mediator who facilitated the Parties' good faith, serious, and informed arm's-length negotiations. Both sides agree that, in light of the risks and expenses associated with continued litigation, the Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members.

The Court has not ruled on the merits of the Class Representatives' claims in this litigation or Defendant's defenses to those claims. The Settlement is a compromise and is not an admission of liability on the part of Defendant.

### **4. Who are the Parties in this Lawsuit?**

Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson are the Plaintiffs and the appointed Class Representatives in this Class Action. Each has been employed as a non-exempt maintenance technician in California sometime during the Class Period.

EMCOR Facilities Services, Inc. is the Defendant in this Class Action.

### **5. Why is this litigation a Class Action?**

In a class action, one or more people called the Class Representatives sue on behalf of themselves and other people who they allege have similar claims. The group of people with allegedly similar claims is called a "class." Each person receiving this notice is a "Class Member" for purposes of this Settlement. If a court certifies (or approves) a class, then one court resolves the issues for all Class Members except for those who request to be excluded from the Class and this Settlement. In this case, for settlement purposes, the Court certified the following Class:

All persons currently or formerly employed as a non-exempt maintenance technicians by EFS in California at some point during the period from March 2, 2016, through July 29, 2021. .

According to EFS's records, you are a member of that Class.

**6. Who are the attorneys for the Plaintiffs and the Class ("Class Counsel")?**

**HADSELL STORMER RENICK & DAI LLP**

Randy Renick  
Cornelia Dai  
128 N. Fair Oaks Avenue  
Pasadena, CA 91103  
Telephone: (626) 585-9600  
Facsimile: (626) 577-7079

**THE SAACKE LAW GROUP**

William C. Saacke  
6816 E. Katella Rd, Ste. 1020  
Cypress, CA 90630  
Phone: (714) 875-5130  
Facsimile: (310) 791-2247

**7. Why is there a Settlement?**

The Court did *not* decide in favor of any of the Plaintiffs or against Defendant. There was no decision on the merits and no trial. Instead, both sides agreed to a no-fault settlement of the Class Action. That way, they avoid the cost and risks of a trial and Class Members will get compensation from the Settlement. Plaintiffs, who were appointed the Class Representatives, and their attorneys think the Settlement is best for all Class Members.

**THE TERMS OF THE SETTLEMENT**

**8. What are the terms of the Settlement and how will my payment be calculated?**

Subject to final Court approval, Defendant will pay a total of \$1,250,000 to fully and finally resolve all claims in the Class Action (referred to as "Maximum Settlement Amount" or "MSA") for (a) Participating Class Members' Individual Settlement Payments; (b) Class Representatives' Court-approved Service Awards to each named Plaintiff in the sum of \$5,000 each (\$25,000 total) for initiation of, work, and efforts in prosecuting the Class Action, for undertaking the risks of payment of costs in the event of an unsuccessful outcome, giving general releases of all claims, and the substantial benefits conferred upon the Class; (c) administration expenses to CAC Services Group, LLC in the estimated sum of \$5,000; (d) PAGA payment of \$20,000 to the California Labor Workforce and Development Agency ("LWDA") under California Labor Code's Private Attorneys General Act of 2004 to cover the government's share of all applicable civil penalties raised by the allegations of the Class Action, of which 75% (\$15,000) will be paid to the LWDA, and the remaining 25% (\$5,000) to be proportionately allocated to PAGA Aggrieved Employees; (e) Class Counsel's attorneys' fees of up to 33.33% (\$416,666.66) of the MSA; (f) litigation costs, subject to proof, of no more than \$15,000; and (g) previously paid settlement amounts of \$82,750 made by Defendant to some Class Members in connection with individual settlement agreements that were subsequently cancelled by this Court.

The Administrator shall determine the amount of the Net Settlement Fund by deducting from the Maximum Settlement Amount, the following court-approved sums: (a) the Attorneys' Fees and Costs Payment, (b) the portion of the PAGA Payment to be paid to the LWDA, (c) the Service Payments, (d) the Administration Costs; and (e) previously paid settlement amounts of \$82,750 made by Defendant to some Class Members in connection with individual settlement agreements in this Action.

To determine each Class Member's Individual Settlement Payment, the Administrator shall assign each Class Member one credit for each day worked during the Class Period and one credit for each PAGA Qualifying Day worked during the PAGA Period for PAGA Aggrieved Employees.

The Administrator will then divide the PAGA settlement portion of the Net Settlement Fund (\$5,000) by the total number of PAGA Qualifying Days worked by PAGA Aggrieved Employees during the PAGA Period, resulting in a value for each credit. The Administrator will then take the credit value and multiply it by the number of credits awarded to each Aggrieved PAGA Employee. Any Aggrieved PAGA Employee who has been awarded less than twenty-five credits will receive twenty-five (25) credits. In the event that Class Members elect to exclude themselves from the Class, they will still be entitled to their portion of the PAGA settlement amount.

Separately, the Administrator will divide the total of the Net Settlement Fund, minus the \$5,000 PAGA settlement portion, by the total number of days worked by Class Members during the Class Period, resulting in a value for each credit. The Administrator will then take the credit value and multiply it by the number of credits awarded to each Class Member. Any Class Member who has been awarded less than twenty-five credits will receive twenty-five (25) credits. In the event that Class Members elect to exclude themselves from the Class, they will no longer be entitled to their portion of the non-PAGA settlement amount, which amount will be returned to the Net Settlement Fund.

Finally, the Administrator shall adjust the Individual Settlement Payment amounts, so that Participating Class Members who previously received money from Defendant in conjunction with a prior individual settlement agreement (“Signers”) shall ultimately recover no more and no less than those who did not (“Non-Signers”). For example, if John Clark, a Non-Signer, and Craig Clark, a Signer who previously received \$750, were both entitled to \$1,250 under the above allocation, John Clark would receive \$1,250 and Craig Clark would receive an additional \$500 (for a total of \$1,250 for both).

For income and payroll tax purposes, one-third (33.33%) of each Settlement Payment will be attributed to unpaid wages, which will be subject to withholdings and deductions and reported as required by law. The remaining two-thirds (66.66%) of each Settlement Payment will be attributed to penalties and interest which will be subject to tax but not be subject to required withholdings and deductions, and will be reported as non-wage income as required by law.

**A claim form is not required.** Any portion of the Net Settlement Amount that would otherwise have been paid to Class Members who request to be excluded from the Settlement will be redistributed and paid to the Participating Class Members.

Plaintiffs’ Motion for Attorney’s Fees and Reimbursement of Costs will be available for review at [REDACTED] at least fifteen days prior to the deadlines for Class Members to Opt Out or Object to the Settlement. Other important court documents in this Class Action, including the motions for approval, will also be available on this website.

## HOW TO GET A PAYMENT

### 9. **How can I get my Individual Settlement Payment?**

If you do nothing, you will automatically receive your Individual Settlement Payment if the Court approves the Settlement at the Final Fairness/Final Approval Hearing. You must, however, notify the Administrator of any change in your name and/or mailing address if the name and/or address to which this Notice was mailed is not correct. **It is your responsibility to keep the Administrator informed of any change to your mailing address by calling 1-8xx-xxx-xxxx. Your Individual Settlement Payment will be mailed to the last known address the Administrator has on file for you.**

If you decide to submit an exclusion or “opt-out” request, you will not receive the full amount of the Individual Settlement Payment. Instead, you will be entitled to a lesser amount only that corresponds to the settlement of claims for civil penalties under PAGA, the Labor Code Private Attorneys General Act of 2004 (“PAGA”),

California Labor Code sections 2698 *et seq.* Class members cannot opt-out of the settlement of these PAGA claims and are entitled to their PAGA settlement payments regardless of whether they submit an exclusion request.

**10. What if I think my information or the number of days worked during the Class Period or PAGA Qualifying Days is wrong?**

The amount of your Individual Settlement Payment will be based on the number of days you worked as a maintenance technician for EFS during the Class Period and the PAGA Qualifying Days, as explained in Sections 2 and 8. The number of days worked shown in Section 2 was obtained from the records of EFS. If you believe the information is not right, you may send a letter to the Administrator indicating what you believe to be the correct information. Your letter must be postmarked on or before \_\_\_\_\_, 2022 [60 days after the initial mailing]. You should include any documents or other information supporting your belief that the number of days worked during the Class Period and PAGA Qualifying Days identified in Section 2 is not correct. The Administrator will resolve any dispute regarding the number of Credits awarded based on EFS's records and any information you provide. The information and data supplied by EFS will be presumed correct unless you supply company records from EFS showing contrary information.

**11. When can I expect to receive my Settlement Payment?**

Your share of the Settlement will be mailed to you approximately seven (7) days after the Court grants final approval of the Settlement. ***Your Settlement Payment will be mailed to the address the Administrator has on file for you, which is the address to which this Notice was mailed.*** Again, if this address is not right, or if you move after you receive this Notice, you must let the Administrator know by calling the Administrator at 1-8xx-xxx-xxxx.

Class Members receiving an Individual Settlement Payment will be responsible for correctly characterizing this compensation for tax purposes and paying taxes due, if any. If such checks remain uncashed after 180 days of issuance and the Administrator is unable to locate you, the Administrator will place a stop payment on all such checks and redistribute the uncashed amounts to the remaining Participating Class Members.

**12. What am I giving up to get an Individual Settlement Payment?**

Unless you exclude yourself, you are staying in the Class, which means that you cannot sue, continue to sue, or be part of any other lawsuit against EFS concerning the legal issues in this Class Action. Specifically, you will be giving up or "releasing" the claims described below and as more fully described in the Joint Stipulation of Class Action Settlement:

**Release of Claims:** After the Court has approved the Settlement, and absent good cause found by the Court, each Class member who has not submitted a timely and valid request to opt out of the Settlement will be bound by the approval and judgment, which will have the effect of releasing against Defendant all claims for wages, reimbursement of expenses, and related penalties and interest actually alleged or that could have been alleged in the *Homer v. EFS* action based on the facts alleged in the Complaint, and allegedly occurring during the Class Period, including but not limited to: (1) failure to pay for all hours worked (e.g. travel time, "off-the-clock" time) in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and the applicable IWC Wage Order, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*; (2) failure to pay overtime wages in violation of California Labor Code §§ 510, 1194, 1198, and the applicable IWC Wage Order, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*; (3) failure to authorize and permit rest breaks, or pay compensation in lieu thereof, in violation of California Labor Code § 226.7, the applicable IWC Wage Order, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*; (4) failure to provide meal periods, or

compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512, the applicable IWC Wage Order, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*; (5) failure to provide reimbursement for business expenses in violation of California Labor Code § 2802, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, (6) failure to provide accurate itemized wage statements, in violation of California Labor Code § 226, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*, (7) failure to timely pay wages due, in violation of Labor Code §§ 201, 202, 203, or California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*

**Mandatory Release of PAGA Claims:** In addition, regardless of whether or not you exclude yourself from the settlement, you will be releasing your claims for civil penalties under the Private Attorneys General Act ("PAGA"), California Labor Code § 2698 *et seq.*, for the California Labor Code violations alleged in the Complaint. Class members cannot opt-out of the settlement of these PAGA claims and are still entitled to their PAGA settlement payments regardless of whether they submit an exclusion request.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 13. How do I get out of the Settlement?

If you wish to preserve the option to pursue your own separate lawsuit against EFS for claims other than the PAGA claims asserted in this Class Action, or if you otherwise do not wish to participate in the Settlement for whatever reason, you should exclude yourself from the Settlement. To exclude yourself, you must return a written request addressed to the Administrator which provides the following information: (i) the name of this Class Action; (ii) the full name, address, telephone number of the person requesting to be excluded; (iii) be personally signed by the Class Member seeking to be excluded, and (v) the following statement:

"I wish to be excluded from the Settlement of the Action, *Homer v. EFS*."

In the alternative, you may complete and return the Exclusion Request Form attached hereto as **Exhibit 1**.

Your written request for exclusion must be mailed to the address shown below, postmarked on or before \_\_\_\_\_, 2021 [60 days of the initial mailing of the Notice Packet].

EFS Class Action Settlement  
Class Action Administrator  
c/o CAC Services Group, LLC



### 14. If I don't exclude myself from the Settlement, can I sue EFS for the same thing later?

No. Unless you exclude yourself from this Class Action, you give up any right to sue EFS for the claims that this Settlement resolves, as stated above in paragraph 12. ***If you have a claim or lawsuit already pending against EFS, you must immediately speak to your lawyer in that case. Do not delay.*** You may need to ask to exclude yourself from this Class Action to continue your own lawsuit. Remember, the deadline to submit a valid and timely request for exclusion is \_\_\_\_\_, 2021. [60 days of the initial mailing of the Notice Packet].

In addition, regardless of whether or not you exclude yourself from the settlement, you will be releasing your claims for civil penalties under the Private Attorneys General Act ("PAGA"), California Labor Code § 2698 *et seq.*, for the California Labor Code violations arising from the facts stated in the Complaint.

**15. If I exclude myself, can I get money from this Settlement?**

Yes, but you will not receive the full amount of your Individual Settlement Payment if you exclude yourself. The additional payment you would have been entitled to receive will be distributed to those Class Members who choose to participate and remain in the Class. Instead, if you decide to exclude yourself, you will receive a reduced amount that corresponds to the settlement of claims for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698 *et seq.*

Class members cannot opt-out of the settlement of these PAGA claims and are still entitled to their PAGA settlement payments regardless of whether they submit an exclusion request.

**OBJECTING TO THE SETTLEMENT**
**16. How do I tell the Court that I don’t like the Settlement?**

If you don’t think the Settlement is fair, you may object to the Settlement and tell the Court your reasons for disagreeing with the Settlement and why approval should be denied. This is the process by which you can tell the Court if you think the Settlement as a whole is unfair. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. Please note that the Court can only approve or reject the Settlement and cannot change the terms of the Settlement. If you think only that your Settlement Payment was miscalculated, use the process set forth above in Section 10. If you submit an objection, the Court will consider your views.

To object, you must send a letter to the Administrator, stating that you object to the proposed settlement in *Homeres v. EFS*, Case No. 30-2020-01136058-CU-OE-CXC. Written objections must (1) be signed by the Class Member and/or his or her representative; (2) state the objecting Class Member’s name, address, telephone number; (3) state the case name as follows: *Homeres v. EFS*; (4) state concisely each objection to the Settlement and the basis for each objection, and (5) be dated. If the Class Member intends to use any document(s) to support his or her objection, a copy of the document(s) must be included with the written objection at the time of submission.

In the alternative, you may complete and return the Objection Form attached hereto as **Exhibit 2**.

To be timely, a mailed written objection must be postmarked on or before \_\_\_\_\_, 2021 [60 days of the initial mailing of the Notice Packet] and addressed to the Claims Administrator as follows:

EFS Class Action Settlement  
Class Action Administrator  
c/o CAC Services Group, LLC  


You may appear in person at the time of the Final Fairness/Final Approval Hearing to speak with the Court and discuss your objection. You may also hire and pay your own lawyer to attend if you so desire.

**17. What’s the difference between objecting and requesting to be excluded from the case?**

Objecting is simply telling the Court you do not like something about the Settlement. You may object only if you stay in the Class. Requesting to be excluded from the Class is telling the Court that you don’t want to be part of

the Class for whatever reason. If you choose to request exclusion from the Class Action, you have no basis to object because the case no longer affects you.

If you remain in the Class and object to any of the terms of the Settlement, the Court will consider your objections when deciding whether to grant final approval of the Settlement. You do not need to appear at the hearing to discuss the objection.

## THE COURT'S FINAL FAIRNESS HEARING

### 18. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Fairness/Final Approval Hearing at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_ 2022, in Department CX101 of the Civil Complex Center, 751 West Santa Ana Blvd., Santa Ana, CA 92701. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and litigation costs, the Class Representative service awards, and the Administrator's fees and expenses.

The Court may reschedule the Final Fairness/Final Approval hearing without further notice to Class Members. Class Members are advised to check the website maintained for the Class Action, \_\_\_\_\_, to confirm that the date has not been changed. However, any Class Member who has filed a written objection will be notified by Class Counsel of any rescheduling of the date and time of the Final Fairness/Final Approval hearing.

### 19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you have mailed your written objection in the manner described above in Paragraph 16, the Court will consider it. You may also hire and pay your own lawyer to attend if you so desire.

### 20. May I appear and speak at the hearing?

You may personally appear or have a lawyer appear on your behalf at the Final Fairness/Final Approval Hearing to talk about your objection. See Paragraph 4.18 of the Joint Stipulation of Class Action Settlement Agreement.

## GETTING MORE INFORMATION

### 21. Who can I contact if I have questions about the Settlement?

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Joint Stipulation of Class Action Settlement and Release ("Agreement") available at \_\_\_\_\_. To view the filings in this case, you may also visit the Court's docket at <https://ocjustice.occourts.org/civilwebShoppingNS/Login.do> or visit the Central Justice Center, Civil Records Department, 700 Civic Center Drive West, Santa Ana, CA 92701, during the hours 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding court holidays.

If you have additional questions, please call the Class Action Administrator, \_\_\_\_\_, at 1-8xx-xxx-xxxx or contact Class Counsel at the addresses and telephone numbers shown above in Section 6.

## ADDITIONAL IMPORTANT INFORMATION

- A. **EFS supports the Settlement** and will not retaliate in any manner whatsoever against any Class Member who stays in the Class and receives an Individual Settlement Payment or requests exclusion from the case and Settlement. No portion of the Net Settlement Amount will go back to EFS under any circumstances as a result of any requests for exclusion by Class Members or uncashed checks.
- B. **It is your responsibility to ensure that the Administrator** has your current mailing address and telephone number on file, as this will be the address to which your Individual Settlement Payment will be mailed.
- C. **Settlement Payment checks must be cashed soon after receipt.** If the Administrator is unable to locate the intended recipients, monies represented by checks that remain uncashed after 180 days of the date of issuance will be redistributed to the remaining Participating Class Members. If your check is lost or misplaced, you should immediately contact the Administrator to request a replacement.

**NOTICE OF CLASS ACTION SETTLEMENT**  
**Exhibit 1 - EXCLUSION REQUEST FORM**

**Exhibit 1**  
**Exclusion Request Form**

If you do not wish to participate in the Settlement, please complete the form and mail it to the Claims Administrator on or before the Exclusion Deadline [\_\_\_\_\_].

My name is \_\_\_\_\_ and I request exclusion from the class and do not wish to participate in the Settlement.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mail to:                   EFS Class Action Settlement  
                              Class Action Administrator  
                              c/o CAC Services Group, LLC



**NOTICE OF CLASS ACTION SETTLEMENT**  
**Exhibit 2 – OBJECTION FORM**

**Exhibit 2**  
**Objection Form**

If you do wish to object to the Settlement, please complete the form and mail it to the Claims Administrator on or before the Exclusion Deadline [\_\_\_\_\_].

My name is \_\_\_\_\_ and I object to the Settlement for the following reason(s):

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Mail to:                   EFS Class Action Settlement  
                              Class Action Administrator  
                              c/o CAC Services Group, LLC



# EXHIBIT B

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Attorneys for Plaintiffs Pete Homeres, Raul Becerra,  
 Frank Hall, Charles Peterson, and Gregory Munson, on  
 behalf of themselves and all others similarly situated

[Additional Counsel Listed on Next Page]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF ORANGE**

Pete Homeres, Raul Becerra, Frank Hall, Charles  
 Peterson, and Gregory Munson, on behalf of  
 themselves and all others similarly situated,

Plaintiffs,

vs.

EMCOR Facilities Services, Inc., an Ohio  
 Corporation, and Does 1 through 50 inclusive,

Defendant.

Case No. 30-2020-01136058-CU-OE-CXC

**Assigned to the Honorable Glenda Sanders  
 Department CX 101**

**[PROPOSED] ORDER AND JUDGMENT**

Complaint Filed: March 2, 2020  
 Amended Complaint: April 13, 2020

**[PROPOSED] ORDER AND JUDGMENT**

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13 *Attorneys for EMCOR Facilities Services, Inc., an Ohio Corporation*  
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**JUDGMENT**

After the hearing on the Motion for Final Approval of the Settlement Agreement held on [ ] and pursuant to the terms set forth in the First Amended Joint Stipulation of Class Action Settlement and Release entered into by the Parties (“Settlement Agreement”), and in accordance with the Order Granting Final Approval of Class Action Settlement, Attorneys’ Fees and Reimbursement of Costs, and good cause appearing there from,

JUDGMENT IS HEREBY ENTERED in accordance therewith as between Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles Peterson, and Gregory Munson, and all persons currently or formerly employed as maintenance technicians (including commercial maintenance technicians, HVAC technicians, and lead technicians) by Defendant as non-exempt/hourly employees in the State of California who drove Defendant’s vehicles to and from home to assigned job sites, at any time beginning March 2, 2016, and ending July 29, 2021, on one hand, and Defendant EMCOR Facilities Services, Inc., an Ohio Corporation (“EFS” or “Defendant”), on the other hand.

Without affecting the finality of this Judgment in any way, pursuant to California Rule of Court 3.545 (b) & (c) this Court hereby retains continuing jurisdiction over: (a) implementation of the Settlement Agreement and any award or plan of allocation for distribution of the Settlement Fund; (b) matters relating to attorneys' fees, costs, interest and expenses in the above-captioned action; and (c) all parties hereto for the purpose of construing, enforcing and administering the Settlement.

In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated and, in such event, all orders entered, and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

1           The Claims Administrator shall post this Judgment on a website accessible to Class Members  
2 for 30 days.

3 **IT IS SO ORDERED.**

4  
5 DATED: \_\_\_\_\_

\_\_\_\_\_  
6 HONORABLE GLENDA SANDERS  
7 Judge of the Orange County Superior Court  
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