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

**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,~~

Defendants.

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

Assigned to the Honorable Lon F. Hurwitz
Department CX 103

**~~SECOND [PROPOSED]~~ ORDER AND
JUDGMENT OF FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
AWARDING ATTORNEY'S FEES,
LITIGATION COSTS, AND SERVICE
PAYMENTS**

1 Plaintiffs' Motion for Order Granting Final Approval of Class Action Settlement and Motion for
2 Order Awarding Attorneys' Fees, Litigation Costs, and Service Payments came on for hearing on July
3 29, 2022, at 1:30 p.m., in Department CX101 of the above-captioned court. Pursuant to this Court's
4 Order Granting Preliminary Approval of Class Action Settlement (Register of Actions No. 172), and
5 the fully-executed First Amended Joint Stipulation of Class Action Settlement and Release
6 ("Settlement Agreement" or "Settlement"), filed as Exhibit 1 to the Declaration of Randy Renick in
7 support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Class Members were given
8 notice of the terms of the Settlement, and the opportunity to comment upon, request exclusion or object
9 to the Settlement and any of its terms.

10 After full consideration of the proposed Settlement, all of the papers filed by the Parties, and the
11 evidence and argument received by the Court in conjunction with the Motion for Order Granting Final
12 Approval of Class Action Settlement and the Motion for Order Awarding Attorneys' Fees, Litigation
13 Costs, and Service Payments, and good cause appearing, IT IS HEREBY ORDERED that Motion for
14 Order Granting Final Approval of Class Action Settlement and the Motion for Order Awarding
15 Attorneys' Fees, Litigation Costs, and Service Payments are GRANTED based on the conditions
16 below.

17 **1. RECITALS**

18 **Class Definition:** The Class consists of: All persons currently or formerly employed as
19 maintenance technicians (including commercial maintenance technicians, HVAC technicians, and lead
20 technicians) by Defendant as non-exempt/hourly employees in the State of California who drive
21 Defendant's vehicles to and from home to assigned job sites, at any time during the Class Period.

22 **The Class Period:** The "Class Period" is March 2, 2016 through July 29, 2021.

23 **PAGA Aggrieved Employees** are defined as all persons currently or formerly employed as
24 maintenance technicians (including commercial maintenance technicians, HVAC technicians, and lead
25 technicians) by Defendant as non-exempt/hourly employees in the State of California who drive
26 Defendant's vehicles to and from home to assigned job sites, from March 2, 2019, to July 29, 2021.

27 **PAGA Period:** The PAGA Period is March 2, 2019, to July 29, 2021

28 **Class Size:** The Class Size Consists of 135 Class Members. There were no requests for

exclusions.

Class Notice: The Preliminary Approval Order further directed the Parties to provide by first-class mail the Class Notice to the Settlement Class, which informed class members of: (a) the proposed Settlement, and the Settlement's key terms; (b) the date, time, and location of the Final Approval Hearing; (c) the right of any Settlement Class Member (defined as individuals included within the definition of the Settlement Class) to object to the proposed Settlement, and an explanation of the procedures to exercise that right; (d) the right of any Settlement Class Member to exclude themselves from the proposed Settlement, and an explanation of the procedures to exercise that right; (e) and the estimated amount of their Individual Settlement Payment.; and (f) that they would receive their share of the Settlement without a claim form.

2. FINDINGS

1. This Order hereby adopts and incorporates by reference the terms and conditions of the Joint Stipulation of Class Action Settlement and Release, together with the definitions and terms used and contained therein.

2. The Court finds that it has jurisdiction over the subject matter of the action and over all parties to the action, including all Class Members.

3. The Court finds that the applicable requirements of California Code of Civil Procedure §382 and California Rule of Court, rule 3.769, have been satisfied with respect to the Class and the Settlement. The Court hereby makes final its earlier provisional certification of the Class for settlement purposes, as set forth in the Preliminary Approval Order. The Class is hereby defined to include:

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

4. The Court finds that the applicable requirements of the California Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.*, have been satisfied with respect to the PAGA Aggrieved Employees and the Settlement. As set forth in the Agreement at Paragraph 2.21:

“PAGA Aggrieved Employees” means all persons currently or formerly employed as maintenance technicians (including commercial

1 maintenance technicians, HVAC technicians, and lead technicians) by
2 Defendant as non-exempt/hourly employees in the State of California
3 who drive Defendant's vehicles to and from home to assigned job sites,
4 from March 2, 2019, to July 29, 2021.

5 5. The Court finds and determines that the notice procedure implemented in this action
6 fully and accurately informed Class Members of all material elements of the Settlement, afforded
7 adequate protections to Class Members, and provided the basis for the Court to make an informed
8 decision regarding approval of the Settlement based on the response of the Class. No objections were
9 presented or filed by any Class Member and no Class Members timely requested exclusion from the
10 Settlement.

11 6. The Court finds and determines that the notice provided in this case was the best notice
12 practicable, and complied fully with Rules 3.766 and 3.769 of the California Rules of Court, due
13 process, and all other applicable laws. Accordingly, absent good cause found by the Court, all Class
14 Members who did not timely and properly submit requests for exclusion from the Settlement are bound
15 by this Order and Judgment entered in this action.

16 7. The Court further finds and determines that the terms of the Settlement are fair,
17 reasonable, and adequate to the Class and to each Class Member, that the Settlement is ordered finally
18 approved, and that all terms and provisions of the Settlement should be and hereby are ordered to be
19 consummated. In particular, the Court finds that the settlement was reached following meaningful
20 discovery and thorough factual and legal investigation conducted by Plaintiffs' counsel; and that the
21 settlement is the result of serious, informed, adversarial, and arm's-length negotiations between
22 experienced counsel representing the interests of the Class and Defendant after mediation. The Court
23 further finds that the Settlement is consistent with public policy, and fully complies with all applicable
24 provisions of law. The Court further finds that the response of the Class to the Settlement supports final
25 approval of the Settlement.

26 8. In so finding, the Court has considered all evidence presented, including evidence
27 regarding the strength of Plaintiffs' case; the risk, expense, and complexity of the claims presented; the
28 likely duration of further litigation; the amount offered in settlement; the extent of investigation and
discovery completed and the experience and views of counsel; the allocation of settlement proceeds

1 among the Class Members; and the fact that the Settlement represents a compromise of the Parties'
2 respective positions rather than the result of a finding of liability after appeal. Additionally, the Court
3 finds that the terms of the Settlement have no obvious deficiencies and do not improperly grant
4 preferential treatment to any individual Class Member. The Parties have provided the Court with
5 sufficient information about the nature and magnitude of the claims being settled, as well as the
6 impediments to recovery, to make an independent assessment of the reasonableness of the terms of
7 which the Parties have agreed.

8 9. The Court finds that all Class Members were given a full and fair opportunity to
9 participate in the Final Approval Hearing. Class Members also have had a full and fair opportunity to
10 exclude themselves from the proposed settlement and the Class.

11 10. The Court finds that payment of Settlement Administration Fees in the amount of \$5,000
12 to the Settlement Administrator is appropriate for the services performed and costs incurred and to be
13 incurred for the notice and settlement administration process. It is hereby ordered that the Settlement
14 Administrator issue payment to itself in the amount of \$5,000, in accordance with the Settlement
15 Agreement.

16 11. The Court hereby confirms Plaintiffs Pete Homeres, Raul Becerra, Frank Hall, Charles
17 Peterson, and Gregory Munson as the Class Representatives. The Court finds that the Class
18 Representative Service Fees in the amount of \$3,000 each to Plaintiffs (\$15,000 total) are fair and
19 reasonable for the work performed by Plaintiffs on behalf of the Class.

20 12. The Court finds and determines that the Settlement payments to be paid to members of
21 the Class as provided for by the Settlement are fair and reasonable.

22 13. The Court finds that the allocation of \$20,000 toward penalties under the California
23 Private Attorneys General Act ("PAGA Payment"), is fair, reasonable, and appropriate, and hereby
24 approved. The Settlement Administrator shall distribute the PAGA Payment as follows: the amount of
25 \$15,000 (75%) to the California Labor and Workforce Development Agency and the amount of \$5,000
26 (25%) to be distributed to all Class Members, according to the terms set forth in the Settlement
27 Agreement and Preliminary Approval Order.

28 14. The Court hereby confirms the law firms of Hadsell Stormer Renick & Dai LLP and The

1 Saacke Law Group as Class Counsel. Class Counsel shall oversee and perform the duties necessary to
2 effectuate the settlement, including the submission to the Court of the Settlement Administrator's final
3 accounting and distribution report, as well as all papers necessary to allow the Court to evaluate the
4 claims process and order distribution of the settlement fund to class members.

5 15. Pursuant to the terms of the Settlement, and the authorities, evidence and argument
6 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the sum of
7 \$416,250. Applying the percentage of recovery analysis with a lodestar cross-check, and considering
8 the factors set forth in *Serrano v. Priest* (1977) 20 Cal.3d 25, 49, the Court finds and determines that
9 such amount is fair, reasonable, and proper. The Court finds the amount to be a reasonable result in
10 light of the quality of the result obtained and the work performed by class counsel. In approving this
11 amount, the Court is not approving the hourly billing rates proposed by class counsel. The fee splitting
12 is as follows: 55% (\$228,937.50) is awarded to Hadsell Stormer Renick & Dai and 45% (\$187,312.50)
13 is awarded to Saacke Law Group.

14 16. The Court awards the reimbursement of Plaintiffs' litigation costs in the sum of \$15,000.
15 The Court finds that each of the costs and expenses submitted by Class Counsel were reasonably and
16 necessarily incurred in prosecuting the claims.

17 3. ORDERS

18 Based on the foregoing recitals and findings, and good cause appearing, **IT IS HEREBY**
19 **ORDERED, ADJUDGED, AND DECREED:**

- 20 1. The Class is certified for settlement purposes.
- 21 2. The Settlement is fully and finally approved as fair, reasonable, adequate, and in the best
22 interests of the Class.
- 23 3. The Parties are ordered to effectuate the Settlement in accordance with this Order and
24 the terms of the Settlement.
- 25 4. The Court approves the payment of attorneys' fees to Class Counsel in the sum of
26 \$416,250, plus the reimbursement of litigation expenses in the sum of \$15,000. The Court finds the
27 amount to be a reasonable result in light of the quality of the result obtained and the work performed by
28 class counsel. In approving this amount, the Court is not approving the hourly billing rates proposed by

1 class counsel. The fee splitting is as follows: 55% (\$228,937.50) is awarded to Hadsell Stormer Renick
2 & Dai and 45% (\$187,312.50) is awarded to Saacke Law Group

3 5. The Court hereby approves the payment of an Incentive Award of \$3,000 to each
4 Plaintiff.

5 6. The Court approves the Settlement Administrator's costs in the amount of \$5,000 to be
6 paid to CAC Services.

7 7. The Court approves the \$20,000 allocated for resolution of any claims that could be or
8 could have been asserted under the PAGA pertaining to or premised upon the alleged violations settled
9 by the Settlement. Pursuant to California Labor Code section 2699(i), \$15,000 out of the Settlement
10 Fund will be paid to the California Labor and Workforce Development Agency, in resolution of the
11 PAGA claims. The remaining \$5,000 of the amount attributed to the PAGA claims will be paid as part
12 of the payment to the Settlement.

13 8. The Final Judgment shall bind each Settlement Class Member. Upon the Effective Date,
14 the Final Judgment shall operate as a release and discharge of Defendant and the Released Parties based
15 on the terms of the releases contained in the Settlement.

16 9. It is hereby ordered that Defendant shall fund the Maximum Settlement Amount within
17 five (5) calendar days after entry of this Final Approval Order, in accordance with the Settlement
18 Agreement.

19 10. It is hereby ordered that the Settlement Administrator shall distribute Individual
20 Settlement Payments to Class Members, including their *pro rata* portion of the twenty-five (25%) of
21 the PAGA Payment, according to the terms set forth in the Settlement Agreement and Preliminary
22 Approval Order.

23 11. It is hereby ordered that all checks for payment of Individual Settlement Payments will
24 be valid and negotiable for one hundred eighty (180) calendar days after they are issued. If the
25 Settlement Administrator is unable to locate the recipients, then the funds associated with settlement
26 checks that have not been cashed or deposited within the 180-day period shall be redistributed to the
27 Participating Class Members.

28 12. Without affecting the finality of this order or the entry of judgment in any way, after

1 entry of this Final Approval Order and Judgment, pursuant to California Rule of Court 3.769(h) and
2 Code of Civil Procedure § 664.6, the Court shall retain jurisdiction to construe, interpret, implement,
3 and enforce the Settlement.

4 13. Pursuant to California Rules of Court, Rule 3.771(b), Notice of Entry of this Final
5 Approval Order and Judgment shall be given to Class Members by posting a copy of the Final
6 Approval Order and Judgment on the class website for a period of at least sixty (60) calendar days after
7 the date of entry of this Final Approval Order and Judgment. No individualized notice shall be required.

8 14. Nothing in this Order shall preclude any action to enforce the Parties' obligations under
9 the Settlement or under this Order.

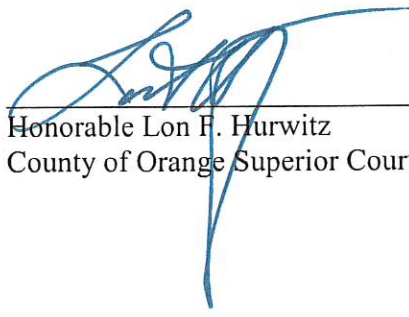
10 15. A final accounting and compliance hearing is hereby set for August 11, 2023, at 1:30
11 p.m., in Dept. CX103. A final compliance status report shall be filed with the Court no later than five
12 (5) court days prior to the final compliance hearing. The final report must include all information
13 necessary for the Court to determine the total amount actually paid to class members, including the
14 amounts redistributed from uncashed checks.

15 4. JUDGMENT

16 The Court enters judgment in accordance with the terms of the order set forth above.

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18 IT IS SO ORDERED AND ADJUDGED.

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21 Dated: MAR 06 2023, 2023

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23 Honorable Lon F. Hurwitz
24 County of Orange Superior Court
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