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Attorneys for Plaintiff

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

KEITH LAY, individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

vs.

ROBERT HEELY CONSTRUCTION, L.P.,
a California limited partnership; and DOES
1 through 100, inclusive,

Defendants.

Case No. BCV-21-100796

Honorable Thomas S. Clark
Department 17

**DECLARATION OF TARA ZABEHI IN
SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL OF PRIVATE
ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE, AWARD OF ATTORNEYS'
FEES AND COSTS, GENERAL
RELEASE FEE, AND SETTLEMENT
ADMINISTRATION COSTS**

[Notice of Motion and Motion for Approval of
Private Attorneys General Act Settlement
Agreement and Release, Award of Attorneys'
Fees and Costs, General Release Fee, and
Settlement Administration Costs; Declaration of
Plaintiff (Keith Lay); and [Proposed] Order and
Judgment filed concurrently herewith]

Hearing Date: July 30, 2024
Hearing Time: 8:30 a.m.
Department: 17

Complaint Filed: June 8, 2020
Trial Date: None Set

DECLARATION OF TARA ZABEHI IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE, AWARD OF
ATTORNEYS' FEES AND COSTS, GENERAL RELEASE FEE, AND SETTLEMENT
ADMINISTRATION COSTS

DECLARATION OF TARA ZABEHI

I, Tara Zabehe, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a member of Lawyers *for* Justice, PC, attorneys of record for Plaintiff Keith Lay (“Plaintiff”). The facts set forth in this declaration are within my personal knowledge or based on information and belief and, if called as a witness, I could and would competently testify thereto.

LITIGATION AND REPRESENTATIVE AND CLASS ACTION EXPERIENCE

2. For over a decade, Lawyers *for* Justice, PC has almost exclusively focused on the prosecution of consumer and employment class actions, involving wage-and-hour claims, race discrimination, unfair business practices, or consumer fraud. Currently, Lawyers *for* Justice, PC is attorney of record in dozens of employment-related putative class actions in both state and federal courts in the State of California. Lawyers *for* Justice, PC has successfully litigated cases involving the executive, administrative, and other overtime exemptions and federal overtime compensation requirements. During a relatively short time, in association with other law firms, Lawyers *for* Justice, PC has recovered millions of dollars on behalf of thousands of individuals in California.

3. Edwin Aiwarzian is a Managing Member and Shareholder of Lawyers *for* Justice, PC. He received his Bachelor of Arts degree from Pepperdine University in April of 1999 and earned a Juris Doctor degree from Pepperdine University School of Law in May of 2004. He has extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Masters in Dispute Resolution degree program. In addition, he has previously served as a pro bono mediator for the Los Angeles County Superior Court. In October of 2000, he obtained a Litigation Paralegal Certificate from the UCLA Extension Program. During the summer of 2000, he studied Legal Writing at Harvard University. From approximately September 2002 to approximately December 2002, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United States Court of Appeals for the Ninth Circuit. From approximately June 2002 to approximately August 2002, he served as a Judicial

Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. In December of 2004, he obtained a license to practice law from the California State Bar. Since in or around October of 2008, through his work at Lawyers for Justice, PC, he has almost exclusively focused on the prosecution of consumer and employment class actions. While employed by Lawyers for Justice PC, he has argued over one hundred (100) motions, taken or defended over one hundred fifty (150) depositions, prepared dozens of expert witnesses for deposition or trial, and attended over one hundred seventy-five (175) mediations. Together with other attorneys at the firm, and in some cases in conjunction with co-counsel, he has successfully litigated cases involving the executive, administrative, and other overtime exemptions to the State of California and federal overtime compensation requirements. Under his supervision, Lawyers for Justice, PC has successfully obtained class certification by contested motion practice in approximately fifteen (15) cases in the last decade and litigated over 1,000 class action or representative action cases.

4. Arby Aiwarzian is a Member and Shareholder of Lawyers for Justice, PC. He received his Bachelor of Arts degree from University of California, Los Angeles and graduated magna cum laude. He earned a Juris Doctor degree, cum laude, from Southwestern Law School. From approximately May 2007 to approximately July 2007, he served as a Judicial Extern to the Honorable Earl Johnson, Jr. of the California Court of Appeal for the Second Appellate District. From approximately August 2008 to approximately December 2008, he served as a Judicial Extern to the Honorable Kim McLane Wardlaw of the United State Court of Appeals for the Ninth Circuit. He was admitted to practice law in California in 2010. He is admitted to practice before all courts of the State of California and all United States District Courts in the State of California. He has worked on many wage-and-hour class action and representative action cases, taking the lead in taking and defending depositions, arguing motions, and attending mediations. He has played an integral role in preparing matters for class certification, including and not limited to, successful certification of a class in *Upson v. Sur La Table* (Los Angeles County Superior Court Case No. BC424012), *Montazemi v. Regus Management* (Los Angeles County

Superior Court Case No. BC478769), and *Abdulhaqq v. Urban Outfitters* (Alameda County Superior Court Case No. RG13680477). Under his supervision, dozens of class action or representative cases have resulted in settlements that have been granted court approval, including and not limited to, those listed in paragraph 6 herein. He has handled over one hundred and fifty (150) mediations and worked on over two hundred and fifty (250) class action or representative action cases which have resulted in settlement.

5. I am an attorney duly licensed to practice before all courts of the State of California and I am an attorney at Lawyers for Justice, PC. In May of 2016, I graduated from Pepperdine University School of Law with a Juris Doctorate degree. I have extensive formal training in dispute resolution and negotiation from the Straus Institute for Dispute Resolution as part of its Certificate in Dispute Resolution program. In June of 2013, I obtained a Bachelor of Arts degree in History and graduated with college honors from University of California, Los Angeles. I attended Pepperdine School of Law starting in 2013 and graduated in 2016. From approximately August 2014 to approximately November 2014, I served as a Judicial Extern to the Honorable James Kaddo of the Los Angeles Superior Court. In 2017, I obtained a license to practice law from the California State Bar. Since 2017, I have worked at Lawyers for Justice, PC and my practice has almost exclusively focused on the prosecution of employment class actions and representative actions. At Lawyers for Justice, PC, I have worked on many wage-and-hour class action and representative action cases, taking the lead in taking and defending depositions, arguing motions, attending mediations, and preparing for trial. I have played an integral role in preparing matters for class certification, including and not limited to, successful certification of a class in *Davis v. Superior Med Surgical, Inc.* (San Bernardino County Superior Court Case No. CIVDS1505744), *Tellez v. Harvest Container Co., Inc.* (Tulare County Superior Court Case No. VCU64528), *Vilitchai v. Ametek Programmable Power, Inc., et al.* (San Diego County Superior Court Case No. 37-2015-00025968-CU-OE-CTL), and *Sanchez, et al. v. Auto-Chlor System of Washington, Inc.* (Los Angeles County Superior Court Case No. BC707670). I have worked on

over two hundred fifty (250) class action or representative action cases which have resulted in settlement.

EXAMPLES OF RESULT IN REPRESENTATIVE AND CLASS ACTION CASES

6. What follows are just a few examples of the type of results Lawyers *for* Justice, PC (“LFJ”) has achieved on behalf of its clients:

a) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a major property management company involving allegations of misclassification of various “manager” positions. On September 20, 2010, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC400414.

b) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer of household items involving allegations of misclassification of the “Assistant Store Manager” position. On October 28, 2010, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC413498.

c) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national property management company involving allegations of misclassification of the “Property Manager” position. On May 23, 2012, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC430918.

d) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer involving allegations of misclassification of the “Store Manager” position. On June 10, 2011, the court granted plaintiffs’ motion for class certification. On August 26, 2013, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC424012.

e) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class and PAGA representative action against a bank, involving allegations of

misclassification of the “Assistant Branch Manager” position. On August 27, 2013, the court granted final approval of the class and PAGA representative action settlement. The Kern County Superior Court Case Number is S-1500-CV-273194-LHB.

f) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class and PAGA representative action against a national wholesale distributor of plumbing and builder supplies, involving allegations of misclassification of multiple salaried “manager” positions. On May 22, 2014, the court granted final approval of the class and PAGA representative action settlement. The Sacramento County Superior Court Case Number is 34-2012-00136285.

g) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class action against a multinational corporation that provides global workplace solutions, involving allegations of misclassification of the “Operations Manager” position. On September 16, 2014, the court granted plaintiff’s motion for class certification. The Los Angeles County Superior Court Case Number is BC478769.

h) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class and PAGA representative action against a national retailer of household items, on behalf of hourly-paid or non-exempt employees. On May 27, 2015, the court granted final approval of the class and PAGA representative action settlement. The San Francisco County Superior Court Case Number is CGC-13-532344.

i) LFJ, in association with co-counsel therein, represented the plaintiff in a wage-and-hour class and PAGA action involving allegations of misclassification of the salaried residential “Property Manager” position. On September 17, 2015, the court granted plaintiff’s motion for class certification. On October 20, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC474784.

j) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a national retailer of upscale

hardware and home furnishings, on behalf of non-exempt employees. On April 28, 2016, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Numbers are BC516795 and JCCP4794, and the Judicial Council Coordination Proceeding Number is 4794.

k) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel and fashion accessories, on behalf of non-exempt employees. On August 5, 2016, the court granted final approval of the class action settlement. The Los Angeles County Superior Court Case Number is BC488069.

l) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class action against a national retailer of apparel, accessories, and home products, involving allegations of misclassification of the "Department Manager" position. On August 12, 2016, the court granted the plaintiffs' motion for class certification in part and certified a class. On August 6, 2019, the court granted final approval of the class action settlement. The Alameda County Superior Court Case Number is RG13680477.

m) LFJ represented the plaintiff in a PAGA representative action against a real estate and property management company, on behalf of non-exempt employees. On November 4, 2016, the court granted approval of the PAGA representative action settlement. The Orange County Superior Court Case Number is 30-2015-00775439-CU-OE-CXC.

n) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a full-service bank, on behalf of non-exempt employees. On November 18, 2016, the court granted final approval of the class and PAGA representative action settlement. The San Francisco County Superior Court Case Number is CJC-13-004839 and the Judicial Council Coordination Proceeding Number is 4839.

o) LFJ represented the plaintiffs in a wage-and-hour class and PAGA representative action against a foodservice distributor, on behalf of non-exempt employees. On January 26, 2017, the court granted final approval of the class and PAGA representative action settlement. The San Bernardino County Superior Court Case Number is CIVDS1507260.

p) LFJ, on behalf of the plaintiff and respondent in a PAGA representative action, successfully opposed in the trial court, and briefed and argued an appeal with respect to the employer's motion to compel arbitration, which resulted in a published opinion by the California Court of Appeal in favor of employees. *Roberto Betancourt v. Prudential Overall Supply* (Cal. App. 4th Dist., Mar. 7, 2017) 9 Cal.App.5th 439, review denied, cert. denied (U.S. Supreme Court Docket No. 17-254). The Riverside County Superior Court Case Numbers are RIC1503952 and RICJCCP5046, and the Judicial Council Coordination Proceeding Number is 5046.

q) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a consumer packaging company, on behalf of non-exempt employees. On March 10, 2017, the court granted final approval of the class and PAGA representative action settlement. The Los Angeles County Superior Court Case Number is BC590429.

r) LFJ, in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a manufacturer of food service industry supplies on behalf of non-exempt employees. On April 14, 2017, the court granted final approval of the class and PAGA representative action settlement. The Orange County Superior Court Case Number is 30-2015-00810013-CU-OE-CXC.

s) LFJ in association with co-counsel therein, represented the plaintiffs in a wage-and-hour class and PAGA representative action against a lumber and hardware company on behalf of non-exempt employees. On April 26, 2017, the court granted final approval of the class and PAGA representative action settlement. The Orange County Superior Court Case Number is 30-2014-00747750-CU-OE-CXC.

t) LFJ represented the plaintiff in a wage-and-hour class and PAGA representative action against a property management company, on behalf of non-exempt employees. On June 14, 2017, the court granted final approval of the class and PAGA

1 representative action settlement. The Los Angeles County Superior Court Case Number is
2 BC586234.

3 u) LFJ represented the plaintiff in a wage-and-hour class and PAGA
4 representative action against a food company on behalf of non-exempt employees. On June 30,
5 2017, the court granted final approval of the class and PAGA representative action settlement.
6 The Sacramento County Superior Court Case Number is 34-2015-00175871.

7 v) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
8 representative action against a chocolate company on behalf of non-exempt employees. On July
9 19, 2017, the court granted final approval of the class and PAGA representative action
10 settlement. The Alameda County Superior Court Case Number is RG15764300.

11 w) LFJ represented the plaintiff in a PAGA representative action, against the
12 parent company of several restaurants, on behalf of hourly-paid, non-exempt employees. On
13 October 18, 2017, the court granted approval of the PAGA representative action settlement. The
14 Los Angeles County Superior Court Case Number is BC569664.

15 x) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
16 representative action against a manufacturer of plastic containers on behalf of non-exempt
17 employees. On October 31, 2017, the court granted final approval of the class and PAGA
18 representative action settlement. The Los Angeles County Superior Court Case Number is
19 BC577233.

20 y) LFJ, in association with co-counsel therein, represented the plaintiffs in a
21 wage-and-hour class and PAGA representative action against a bank on behalf of non-exempt
22 employees. On December 11, 2017, the court granted final approval of the class and PAGA
23 representative action settlement. The Los Angeles County Superior Court Case Number is
24 BC569646.

25 z) LFJ, in association with co-counsel therein, represented the plaintiffs in a
26 wage-and-hour class and PAGA representative action against a property management company
27 on behalf of hourly-paid and non-exempt employees. On January 4, 2018, the court granted final
28

1 approval of the class and PAGA representative action settlement. The Los Angeles County
2 Superior Court Case Number is JCCP4819 and the Judicial Council Coordination Proceeding
3 Number is 4819.

4 aa) LFJ, in association with co-counsel therein, represented the plaintiffs in a
5 wage-and-hour class and PAGA representative action against a global provider of flexible office
6 space solutions. On February 15, 2018, the court entered an order granting final approval of the
7 class and PAGA representative action settlement. The Los Angeles County Superior Court Case
8 Number is BC498401.

9 bb) LFJ, in association with co-counsel therein, represents the plaintiff in a
10 wage-and-hour class action against a container manufacturer, on behalf of non-exempt
11 employees. On October 15, 2018, the court granted the plaintiff's motion for class certification.
12 The Tulare County Superior Court Case Number is VCU264528.

13 cc) LFJ represented the plaintiffs in a wage-and-hour class and PAGA
14 representative action against a behavioral health service provider on behalf of non-exempt
15 employees. On November 13, 2018, the court granted final approval of the class and PAGA
16 representative action settlement. The Alameda County Superior Court Case Number is
17 RG16811450.

18 dd) LFJ, in association with co-counsel therein, represented the plaintiff in a
19 PAGA representative action against a global provider of products and services to the energy
20 industry, on behalf of hourly-paid and non-exempt employees. On November 19, 2018, the court
21 granted approval of the PAGA representative action settlement. The Kern County Superior
22 Court Case Number is S-1500-CV-280215-SDC.

23 ee) LFJ, in association with co-counsel therein, represents the plaintiff in a
24 wage-and-hour class action against a parking company on behalf of non-exempt employees. On
25 September 3, 2019, the court granted the plaintiff's motion for class certification and certified a
26 class. The Santa Clara County Superior Court Case Number is 16CV292208 and the Judicial
27 Council Coordination Proceeding Number is 4886.

1 ff) LFJ, in association with co-counsel therein, represents the plaintiffs in a
2 wage-and-hour class and representative action against a bank on behalf of non-exempt
3 employees. On September 27, 2019, the court granted the plaintiffs' motion for class
4 certification in part and certified a class. The Alameda County Superior Court Case Number is
5 RG15757606 and the Judicial Council Coordination Proceeding Number is 4921.

6 gg) LFJ, in association with co-counsel therein, represented the plaintiffs in a
7 wage-and-hour class and PAGA representative action against a national retailer of apparel and
8 fashion accessories, on behalf of non-exempt employees. On October 9, 2019, the court granted
9 the plaintiffs' motion for class certification in part and certified a class. On May 14, 2021, the
10 court granted final approval of the class and PAGA representative action settlement. The
11 Sacramento County Superior Court Case Number is 34-2015-00175330-CU-OE-GDS.

12 hh) LFJ, in association with co-counsel therein, represents the plaintiff in a
13 wage-and-hour class and PAGA representative action against a medical equipment supplier on
14 behalf of non-exempt employees. On February 13, 2020, the Court granted the plaintiff's motion
15 for class certification and certified a class. The San Bernardino County Superior Court Case
16 Number is CIVDS1505744.

17 ii) LFJ, in association with co-counsel therein, on behalf of the plaintiff and
18 respondent in a PAGA representative action, successfully opposed in the trial court, and briefed
19 and argued an appeal with respect to the employer's motion to compel arbitration, resulting in a
20 notable decision from the California Supreme Court clarifying the law regarding PAGA claims,
21 *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175. On February 21, 2020, the court granted
22 approval of the PAGA representative action settlement. The San Diego County Superior Court
23 Case Number is 34-2015-00175330.

24 jj) LFJ, in association with co-counsel therein, represents the plaintiff in a
25 wage-and-hour class and PAGA representative action against a large national drug testing
26 laboratory on behalf of non-exempt employees. On February 21, 2020, the court granted the
27

1 plaintiff's motion for class certification and certified a class. The San Diego County Superior
2 Court Case Number is 37-2018-00019611-CU-OE-CTL.

3 kk) LFJ, in association with co-counsel therein, represents the plaintiffs in a
4 wage-and-hour class and PAGA representative action against a national retailer of sportswear,
5 footwear, and camping equipment on behalf of non-exempt employees. On March 16, 2020, the
6 court granted in part the plaintiff's motion for class certification and certified a class. The
7 Riverside County Superior Court Case Numbers are RIC1507504 and RICJCCP4930, and the
8 Judicial Council Coordination Proceeding Number is 4930.

9 ll) LFJ, in association with co-counsel therein, represents the plaintiffs in a
10 wage-and-hour class action against manufacturer and supplier of power products and services on
11 behalf of non-exempt employees. On July 31, 2020, the court granted in part the plaintiffs'
12 motion for class certification and certified a class. The San Diego County Superior Court Case
13 Number is 37-2015-00025968-CU-OE-CTL.

14 mm) LFJ represents the plaintiff in a wage-and-hour class action against a
15 nutritional products manufacturer on behalf of non-exempt production line employees. On
16 December 13, 2021, the court granted the plaintiff's motion for class certification in part and
17 certified a class. The Solano County Superior Court Case Number is FCS051001.

18 nn) LFJ represents the plaintiffs in a wage-and-hour class action against a
19 manufacturer and distributor of commercial dish and glass cleaning machines and supplies for
20 the restaurant and hospitality industries, on behalf of hourly-paid or non-exempt employees. On
21 July 13, 2023, the court granted the plaintiffs' motion for class certification and certified a class.
22 The Los Angeles County Superior Court Case Number is BC707670.

23 **THE SETTLEMENT REACHED IN THE ACTION**

24 7. Marked and attached hereto as "**EXHIBIT 1**" is the Private Attorneys General
25 Act Settlement Agreement and Release ("Settlement," "Agreement," or "Settlement
26 Agreement"), entered into between Plaintiff Keith Lay, for himself and on behalf of the State of
27 California and other aggrieved employees pursuant to the Private Attorneys General Act, and

Defendant Robert Heely Construction, L.P. (“Defendant” or “Robert Heely”). The parties have also drafted and agreed to the form and content of the proposed informational cover letter (“Cover Letter”) for mailing to Aggrieved Employees when Individual Settlement Shares are distributed to them, in substantially the form attached as “EXHIBIT 1” to the [Proposed] Order and Judgment Granting Approval of Private Attorneys General Act (Cal. Labor Code § 2698, *Et Seq.*) Settlement Agreement and Award of Attorneys’ Fees and Costs, General Release Fee, and Settlement Administration Costs. The Court is respectfully requested to approve the proposed Cover Letter.

8. The Settlement pertains to the following allegedly aggrieved employees: (a) all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California (“aggrieved employees subgroup A”) and (b) all current and former salaried planners/schedulers who were employed by Defendant within the State of California (“aggrieved employees subgroup B”) during the PAGA Period (hereinafter collectively referred to as the “Aggrieved Employees”). The “PAGA Period” means the period between March 30, 2019 through approval. Defendant has represented that there are approximately Five Hundred and Thirty-Two (532) Aggrieved Employees who worked during the PAGA Period.

9. Plaintiff has satisfied the prerequisites under California Labor Code section 2699.3(a), including, and not limited to, providing the California Labor and Workforce Development Agency (“LWDA”) and the employer with written notice of the specific provisions of the California Labor Code that are alleged to have been violated, including the facts and theories to support the alleged violations, by way of written correspondence on behalf of Plaintiff Keith Lay that was dated March 30, 2020 (“PAGA Notice”). The PAGA Notice was sent by U.S. Certified Mail to the employers and submitted to the LWDA by way of online submission on the LWDA’s website. Aside from confirmation of receipt of the PAGA Notices, the LWDA did not respond to the PAGA Notices. A true and correct copy of the Plaintiff’s March 30, 2020 PAGA Notice is attached hereto as “**EXHIBIT 2.**”

10. Defendant has agreed to pay the gross amount of Four Hundred and Twenty-Five

Thousand Dollars (\$425,000.00) (“Total Settlement Amount”), subject to possible increase under Section 3(b) of the Settlement Agreement, to settle this matter. The Settlement Agreement provides that the “Net Settlement Amount” will be the Total Settlement Amount less the following amounts: (1) Attorneys’ Fees consisting of attorneys’ fees of \$148,750.00 and reimbursement of litigation costs and expenses of \$14,106.66 to Lawyers *for* Justice, PC (“Plaintiff’s Counsel”); (2) General Release Fee of \$10,000.00 to Plaintiff; and (3) Settlement Administration Costs of up to \$7,500.00 to Phoenix Settlement Administrators. Plaintiff’s Counsel only seeks an award of reimbursement of litigation costs and expenses in the amount of \$14,106.66, and assuming that the requested Attorneys’ Fees and Costs, General Release Fees, and Settlement Administration Costs are approved by the Court, the Net Settlement Amount is estimated to be approximately \$244,643.34. The Net Settlement Amount will be distributed to the LWDA and the Aggrieved Employees pursuant to California Labor Code section 2699(i). Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA, which is estimated to be \$183,482.50 (“LWDA Payment”), and twenty-five percent (25%) of the Net Settlement Amount, which is estimated to be \$61,160.84 (“Employee’s Portion”), will be distributed to the Aggrieved Employees on a *pro rata* basis, based on the number of pay periods they each worked during the PAGA Period (“Compensable Pay Periods”). The parties have agreed to retain Phoenix Settlement Administrators. (“Phoenix” or “Settlement Administrator”) to handle the administration of the Settlement, and the Court is respectfully requested to appoint Phoenix Settlement Administrators to serve as the Settlement Administrator. The Settlement Administrator Costs are estimated not to exceed \$7,500.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.

THE LITIGATION AND WORK PERFORMED BY PLAINTIFF’S COUNSEL

11. The effectiveness of Plaintiff’s Counsel, Lawyers *for* Justice, PC, in prosecuting this case has translated into tangible monetary benefits for Plaintiff, Aggrieved Employees, and the State of California in the following respects: (1) their recoveries over a reasonably short period of time as opposed to waiting additional years for the same, or possibly, a worse, result;

(2) a guaranteed result that compares favorably with other similar representative action settlements; and (3) significant savings in fees and costs which would have only increased significantly had the case progressed through trial and/or appeals.

12. After engaging in extensive investigations, formal and informal discovery, and exchange of information, data, and documents, the parties participated in settlement negotiations to try to resolve the above-captioned lawsuit. These efforts included participating in mediation on July 19, 2022, conducted by the Honorable S. James Otero (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters. The Parties did not immediately reach a resolution on the day of the mediation. However, ultimately with the aid of the mediator, ongoing negotiations between counsel, the parties reached the Settlement described herein. In the course of mediation and settlement negotiations, the parties discussed all aspects of the case, including the risks and delays of further litigation, arbitration, and proceeding with trial, as well as the law relating to representative PAGA actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, the evidence produced and analyzed, and the possibility of bifurcation of discovery and/or trial and appeals, among other things. During all settlement discussions, the parties conducted their negotiations at arm's length in an adversarial position.

13. Prior to reaching the Settlement, the parties investigated the veracity, strength, and scope of the PAGA claim and allegations, and were preparing for arbitrating Plaintiff's claims and ultimately trial of the PAGA claims. Plaintiff conducted significant investigation and formal and informal discovery and exchange of information, documents, and data regarding the facts of the case, including and not limited to, the review, consideration, and analysis of a large volume of information, documents, and data obtained from Plaintiff, Defendant, and other sources. The information, documents, and data that were reviewed and analyzed by Plaintiff's Counsel included, and were not limited to, Plaintiff's personnel records, sampling of time and corresponding wage records, a variety of Employee Policy documents, Arbitration Agreement(s), Authorization Forms, Employee Handbook, among other documents. Counsel for the parties

undertook significant investigation and evaluation of the PAGA claim and related allegations, including, and not limited to, calculating the potential monetary recovery under PAGA. Other work performed by Plaintiff's Counsel included, but was not limited to: meeting and conferring with Defendants' counsel regarding the pleadings, case management, initiating arbitration, the mediation, and settlement, among other issues; case strategy and analysis; drafting, reviewing, and revising the pleadings, court filings, motions, the mediation brief, settlement agreement, and settlement approval motion papers; and preparing for and appearing for court proceeding, mediation, and settlement negotiations. Counsel for the parties have further invested time to research the applicable law, which is evolving as it relates to representative PAGA actions, arbitration of PAGA actions, misclassification of exempt employees, off-the-clock theory, meal and rest periods, meal waivers, regular rate of pay calculations, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses, as well as facts discovered.

14. Based on investigation and information discovered, Plaintiff's Counsel believes that there is sufficient evidence to support the allegations that Defendant violated the California Labor Code. While Plaintiff's counsel believes that the PAGA claim has merit and that Plaintiff will ultimately succeed in arbitration, litigation and prevail at trial, Plaintiff and Plaintiff's Counsel also recognize Defendant's defenses, the costs of arbitration and further litigation, and multiple risks to recovery. For example, although wage-and-hour actions are amenable to resolution as to a group of employees, some courts have also found that, for various reasons, the issues raised by Plaintiff, including, and not limited to, the issues of non-compliant meal periods, non-compliant rest periods, and unreimbursed business expenses, raise individualized issues and/or are not suitable for adjudication as to a group of employees.

15. Plaintiff and his counsel have also considered the uncertainty and risk of the outcome of arbitration and litigation, including the difficulties and delays inherent in such litigation. In order to prevail on the PAGA claim, Plaintiff would have to prove that Defendant engaged in the alleged California Labor Code violations and demonstrate that Defendant's conduct warrants the imposition of penalties. Plaintiff's core allegations are that Defendant has

1 violated the California Labor Code by failing to pay overtime and minimum wages, failing to
2 provide compliant meal and rest periods and associated premiums, failing to timely pay wages
3 during employment and upon termination of employment, failing to provide complete and
4 accurate wage statements, failing to keep complete and accurate payroll records, and failing to
5 reimburse necessary business-related expenses and costs. Further, Plaintiff and other aggrieved
6 employees were entitled to receive certain wages for overtime compensation, but they were not
7 paid for all overtime hours worked because Defendants misclassified them as “exempt.”

8 16. From the inception of this litigation, Defendant indicated that they would
9 aggressively litigate this case and contended that they would ultimately succeed in the action.
10 Defendant maintained several defenses to Plaintiff’s allegations, which, if successfully argued
11 and proven, had the potential to eliminate or substantially reduce recovery. Throughout this
12 litigation, Defendant maintained, and continues to maintain, that it did not engage in a uniform
13 policy and systematic scheme of wage abuse against their hourly employees, nor did they
14 misclassify exempt employees, and that they had, and continue to have, legally-compliant
15 employment policies and practices throughout the time period at issue. Defendant deny that they
16 ever violated any provision of the California Labor Code. Defendant further denied, and
17 continues to deny, that the lawsuit is appropriate for representative adjudication for any purpose
18 other than the Settlement.

19 17. Even if Defendant failed on its defenses, Plaintiff would inevitably face other
20 challenges in court. For example, Defendant would challenge Plaintiff’s standing as an
21 aggrieved employee and denied that any of Defendant’s other employees whom Plaintiff seeks to
22 represent are aggrieved. Aside from challenges relating to standing, Defendant would have
23 likely sought bifurcation of discovery and/or trial of the PAGA claim — multiple courts have
24 taken such an approach, for example, limiting discovery or trial of the issues to Plaintiff.
25 Defendant may also contend that an important feature of the PAGA statute is that a court has
26 discretion to reduce the penalties to be assessed against the employer pursuant to California
27 Labor Code section 2699(e)(1)-(2). As discussed above, Defendant denied and continue to deny

that they ever violated any provision of the California Labor Code. However, assuming, *arguendo*, that any violations occurred, Defendant argues the violations would not be viewed as subsequent violations giving rise to heightened penalties. Defendant will also argue that the Court was unlikely to assess cumulative penalties for the maximum number of possible, separate California Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory—especially where certain conduct may be regulated by multiple provisions of the California Labor Code that are interrelated and work in tandem.

18. The parties had the opportunity to review extensive information, documents, and data regarding Plaintiff and Aggrieved Employees employment with Defendant in an effort to determine the potential value and strength of the PAGA claim. Counsel for the parties invested time reviewing and analyzing the relevant information, documents, and data, and this information made it possible to calculate the potential value of the PAGA claim. Accordingly, the parties have conducted sufficient investigation and review of data, documents, and information to be sufficiently apprised of the nature and extent of the PAGA claim asserted in this lawsuit, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy, and reasonableness. The parties have also considered the settlement negotiations and the recommendations of the mediator, Honorable S. James Otero (Ret.), who is highly experienced in mediating complex labor and employment matters. The parties have agreed that this case is well-suited for settlement given the legal issues relating to the PAGA claim, as well as the costs and risks to both sides that would attend further litigation. The Settlement takes into account the strengths and weaknesses of each side’s position and the uncertainty of how the case might have concluded as litigation continued, at trial, and/or upon appeal.

19. As set forth more fully in the accompanying Motion, Plaintiff’s counsel seeks attorneys’ fees in the amount of \$148,750.00, which represents approximately thirty-five percent (35%) of the Total Settlement Amount, as provided by the Settlement Agreement. Pursuant to the contingency-fee agreements entered into by and between Plaintiff and Plaintiff’s Counsel, Plaintiff has agreed to contingency-fees of at least forty percent (40%) of the recovery. The

attorneys' fees sought are commensurate with: (1) the risk that Plaintiff's Counsel took in commencing the case; (2) the time, effort, and expense that Plaintiff's Counsel dedicated to the case; (3) the skill and determination that Plaintiff's Counsel has shown; (4) the results that Plaintiff's Counsel has achieved throughout the litigation; (5) value of the settlement that Plaintiff's Counsel has achieved in the case; and (6) the other cases that Plaintiff's Counsel has turned down in order to devote its time and efforts to this case.

LITIGATION COSTS AND EXPENSES INCURRED BY PLAINTIFF'S COUNSEL

20. Plaintiff's Counsel seeks reimbursement of **\$14,106.66** for litigation costs and expenses incurred in this case, as reflected in the Case Cost Detail attached hereto as "**EXHIBIT 3.**" It should be noted that Plaintiff's Counsel has borne all of the risks and costs of litigation to date and will not receive any compensation until a recovery is obtained in this matter. These costs and expenses were reasonable and necessary in the prosecution of this matter and to obtain the Settlement. The amount sought for reimbursement is less than the maximum amount (\$25,000.00) allocated under the Settlement Agreement for reimbursement of litigation costs and expenses. The cost savings of \$10,893.34 will be part of the Net Settlement Amount.

GENERAL RELEASE FEES TO PLAINTIFF

21. In recognition of his efforts and work in spearheading the litigation of this matter, as well as for her broader individual waiver and release of claims with a California Civil Code Section 1542 waiver (set forth in Section 8(b) of the Settlement Agreement), the Settlement provides General Release Fees to Plaintiff in the total amount of \$10,000.00 to be paid out of the Total Settlement Amount, subject to approval by the Court. The requested General Release Fees are fair and appropriate. By initiating and pursuing this matter, Plaintiff stepped into the shoes of the State of California and undertook the responsibilities of serving in a representative capacity. Plaintiff has spent a substantial amount of time and effort discussing his employment with his counsel, gathering and producing relevant documents and information, and providing the facts and evidence necessary to attempt to prove the allegations. Defendant propounded discovery requests on Plaintiff, and Plaintiff spent time reviewing said discovery requests and providing

1 information and documents in response thereto. Plaintiff was available whenever his counsel
2 needed him and actively tried to obtain and provide information that would facilitate the pursuit
3 of the PAGA claim. Accordingly, it is appropriate and just for Plaintiff to receive General
4 Release Fees, in addition to the Individual Settlement Share they will receive as an Aggrieved
5 Employee for his share of the Net Settlement Amount.

6 22. Plaintiff's Counsel submits that the Settlement fulfills the purpose of the PAGA
7 statute, is within the accepted range of recoveries for this type of litigation, and is fair,
8 reasonable, and adequate given the substantial monetary benefits provided for by the Settlement,
9 the strengths and weaknesses of this case, and the inherent delay, costs, risks, and uncertainty
10 associated with continued litigation.

11 I declare under penalty of perjury under the laws of the State of California that the
12 foregoing is true and correct.

13 Executed this 1st day of July 2024, at Glendale, California.

14 

15 _____
Tara Zabehi

EXHIBIT 1

**PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
RELEASE**

This Private Attorneys General Act Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between Keith Lay (“Plaintiff”), for himself and as a representative of the State of California with respect to the Aggrieved Employees (as defined in Section 3(a)(5) below) and Robert Heely Construction, L.P. (“Defendant”), subject to approval by the Court. The term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendant, or both, as may be appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from approximately October 2018 to approximately May 2019;

(b) On March 30, 2020 Lawyers *for* Justice, PC (“Plaintiff’s Counsel”), submitted a letter on behalf of Plaintiff to the California Labor and Workforce Development Agency (“LWDA”) and Defendant, to notify the LWDA and Defendant, pursuant to the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) of Plaintiff’s intent to seek civil penalties under PAGA for Defendant’s alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia*, Wage Orders 4-2001 and 16-2001, thereby initiating LWDA Case Number LWDA-CM-781018-20 (the “PAGA Notice”);

(c) On June 8, 2020, Plaintiff filed his Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. (“Operative Complaint”), commencing a representative action under PAGA against Defendant, entitled *Lay v. Robert Heely Construction, L.P.*, currently pending in Kern County Superior Court, Case No. BCV-21-100796 (the “Action”). The Operative Complaint asserts a single cause of action for civil penalties under PAGA, for violations of multiple provisions of the California Labor Code and applicable Industrial Welfare Commission Wage Orders;

(d) On July 19, 2022, the Parties mediated the Action with the Honorable S. James Otero (Ret.) and while the mediation session was not ultimately successful, the Parties resumed litigation efforts while engaging in further negotiations. The Parties ultimately through informal negotiations reached the Settlement described herein to resolve the Action in its entirety;

(e) There has been no determination on the merits of the Action or the PAGA Notice but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve the Action and Released Claims (as defined in Section 8(a) below).

2. **No Admission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration.**

(a) In consideration for Plaintiff signing this Settlement Agreement and complying with its terms, Defendant shall pay the maximum gross sum of Four Hundred and Twenty-Five Thousand Dollars (\$425,000.00) (the “Total Settlement Amount”) to resolve the Action and Released Claims (as defined herein), which will be paid as follows:

(1) Attorneys’ fees in the amount of Thirty-Five Percent (35%) of the Total Settlement Amount, which is One Hundred Forty-Eight Thousand Seven Hundred and Fifty Dollars (\$148,750.00) if the Total Settlement Amount remains \$425,000.00, and reimbursement of litigation costs and expenses in the amount of up to Twenty-Five Thousand Dollar and Zero Cents (\$25,000.00) (collectively, “Attorneys’ Fees and Costs”) to Plaintiff’s Counsel, which Defendant will not contest.

(2) A general release fee of up to the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) (“General Release Fee”) to Plaintiff, which Defendant will not contest.

(3) Costs and expenses of administration of the Settlement up to the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (“Settlement Administration Costs”) to Phoenix Class Action Administrators (the “PAGA Settlement Administrator”).

(4) The amounts stated in Sections 3(a)(1) – 3(a)(3) above, once approved by the Court, shall be paid from the Total Settlement Amount. The balance remaining after these deductions is referred to as the “Net Settlement Amount.”

(5) Seventy-five percent (75%) of the Net Settlement Amount will be distributed to the LWDA (“LWDA Payment”); and the remaining twenty-five percent (25%) will be distributed to (a) all current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California (“aggrieved employees subgroup A”) and (b) all current and former salaried planners/schedulers who were employed by Defendant within the State of California (“aggrieved employees subgroup B”) during the PAGA Period (hereinafter collectively referred to as the “Aggrieved Employees”). The period March 30, 2019 through approval is the “PAGA Period”. The 25% portion of the Net Settlement Amount payable to Aggrieved Employees is referred to as the “Employees’ Portion.”

(b) The Aggrieved Employees are estimated to consist of approximately 532 individuals who worked approximately 21,900 Compensable Pay Periods through March 5, 2024. If the actual number of Compensable Pay Periods during the PAGA Period is more than ten percent (10%) above 21,900 (i.e., 24,090), the Total Settlement Amount will be increased by the percentage that the actual number exceeds 24,090 Compensable Pay Periods, or the PAGA Period may be cut off, at the option of the Defendant, to the time period once the Compensable Pay Periods reach 24,090.

(c) Because this is a settlement of PAGA claims for civil penalties only, no portion of the Settlement is allocated to unpaid wages. One Hundred Percent (100%) of the payments for Attorneys’ Fees and Costs, General Release Fee, and the Net Settlement Amount to be paid to the LWDA and Aggrieved Employees as described in Section 3(a) above will be

treated and reported for tax purposes as non-wage payments and the PAGA Settlement Administrator will be responsible for issuing IRS Forms 1099 as required.

4. **Court Approval is Required.** Plaintiff understands and agrees that the State of California and Aggrieved Employees, including Plaintiff, would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement, and the fulfillment of the promises contained herein, as well as Court approval of the Settlement. If this Settlement Agreement is not approved by the Court, it shall be null and void.

5. **Disbursal of Settlement Funds.**

(a) Subject to Section 4 above, Defendant shall remit to the PAGA Settlement Administrator the sums described more fully in Section 3(a) above, after all of the following has occurred: (i) the Settlement Agreement is fully executed by all Parties and their counsel; and (ii) the Court has entered an order approving the Settlement Agreement.

(b) Upon complete distribution of the Total Settlement Amount by the PAGA Settlement Administrator in accordance with this Settlement Agreement, the PAGA Settlement Administrator will notify the Parties of distribution of the entire Total Settlement Amount.

6. **Approval and Implementation of the PAGA Settlement.**

(a) The Parties are aware that some courts have approved a PAGA settlement and entered an order approving the settlement and judgment and thereafter closed the case, while others have approved a PAGA settlement and entered only an order approving the settlement with later instructions to file a request for dismissal of the action. The Parties agree to cooperate and take any and all steps required by the Court in the Action to implement the settlement and terminate the Action pursuant to settlement (i.e., to terminate the Action by way of judgment or dismissal).

(b) The Parties further agree to cooperate in the drafting and/or filing of any further documents and/or filings reasonably necessary to be prepared and/or filed, and to take all steps that may be requested by the Court in order to obtain approval and implementation of this Settlement Agreement, and the payments described in Section 3(a) above.

(c) The Parties shall seek to obtain Court approval of this Settlement Agreement by way of an unopposed motion to be filed by Plaintiff's Counsel. Plaintiff's Counsel shall provide a draft of all documents to be submitted in connection with the motion to approve this Settlement Agreement to John T. Egley of Call & Jensen, APC ("Defendant's Counsel") for review; Defendant's Counsel will be given an opportunity to comment on the papers prior to their being filed with the Court, and such comments will be implemented to the extent reasonable.

(d) The Parties expressly acknowledge that the Court's approval of the Settlement Agreement is a condition precedent to any payments described in this Settlement Agreement. Therefore, the Parties further acknowledge that, should the Court not grant approval of this Settlement Agreement and/or should the Court refuse to grant judgment or dismissal of the Action and close the Action based on the Settlement, the entirety of this Settlement Agreement shall be null and void.

7. **Payment of Total Settlement Amount / Notice to Recipients.**

(a) Subject to Court approval of this Settlement Agreement, payment of the sums described in Section 3(a) above shall be made by Defendant by transmitting the required sums to a qualified settlement account established by the PAGA Settlement Administrator for administration of this Settlement, within fourteen (14) calendar days of the Court's order granting approval of this Settlement Agreement. If the date by which payment by Defendant is due falls on a Saturday, Sunday or legal holiday in the State of California, then the due date shall be extended the next following day which is not a Saturday, Sunday or legal holiday in the State of California.

(b) Each Aggrieved Employee will be entitled to a *pro rata* share of 25% of the Net Settlement Amount (i.e., the Employees' Portion) based upon the number of pay periods they each worked between March 30, 2019 through approval ("Compensable Pay Periods"), based on Defendant's payroll records where any pay check received for work performed counts as a pay period. Specifically, to calculate each Aggrieved Employee's share of the Employees' Portion ("Individual Settlement Share"), the PAGA Settlement Administrator shall: (i) for each Aggrieved Employee, divide the number of Compensable Pay Periods he or she individually worked by the total aggregate number of Compensable Pay Periods worked by all Aggrieved Employees, and then (ii) multiply this amount by the Employees' Portion to arrive at each Aggrieved Employee's Individual Settlement Share.

(1) One Hundred Percent (100%) of all Individual Settlement Shares are to be considered penalties and the PAGA Settlement Administrator will not undertake any deductions, withholding, or remittances for local, state, or federal taxes. Aggrieved Employees' Individual Settlement Shares will be reported on an IRS Form 1099, as required by the IRS.

(c) The PAGA Settlement Administrator shall distribute each Individual Settlement Share by way of check, along with a cover letter ("Cover Letter") agreed to by the Parties and approved by the Court, in substantially the form attached hereto as "Exhibit A", in the following manner:

(1) No later than seven (7) calendar days after the Court's order granting approval of the Settlement, Defendant shall provide the PAGA Settlement Administrator with a list of all Aggrieved Employees (the "Aggrieved Employees List"), containing the following information for each Aggrieved Employee: (i) first and last name; (ii) last known address; (iii) last known telephone number; (iv) Social Security number; and (v) Compensable Pay Periods.

(2) The PAGA Settlement Administrator shall conduct one (1) National Change of Address ("NCOA") search for all individuals identified on the Aggrieved Employees List, and update addresses for Aggrieved Employees to the extent updated addresses are located through the NCOA search.

(3) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall mail the agreed-upon Cover Letter and Individual Settlement Share checks (together, the "PAGA Settlement Package") to all Aggrieved Employees by first-class United States mail. For each PAGA Settlement Package that is returned undeliverable within thirty (30) calendar days of the initial mailing, the PAGA Settlement Administrator shall promptly attempt

to locate an alternate, updated address for the Aggrieved Employee at issue, by using a skip-trace search and shall attempt one (1) re-mailing of the PAGA Settlement Package.

(4) The Individual Settlement Share checks issued to Aggrieved Employees shall remain valid for ninety (90) calendar days, and thereafter, shall be canceled. Funds associated with canceled checks shall be transmitted to the State Controller's Office Unclaimed Property Division in the name of the Aggrieved Employee(s) at issue and in the amount of his or her respective Individual Settlement Share(s).

(d) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the LWDA Payment to the LWDA.

(e) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Attorneys' Fees and Costs to Plaintiff's Counsel, unless instructed otherwise by Plaintiff's Counsel. At the request of Plaintiff's Counsel, the PAGA Settlement Administrator may purchase annuities, utilize United States Treasuries and bonds, or utilize any other attorney fee deferral vehicles and any additional expenses associated with doing so will be paid separately by Plaintiff's Counsel.

(f) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the General Release Fee to Plaintiff.

(g) No later than fourteen (14) calendar days after the PAGA Settlement Administrator receives the Aggrieved Employees List and Total Settlement Amount, the PAGA Settlement Administrator shall transmit the Settlement Administration Costs to itself, only after the PAGA Settlement Packages have been mailed to all Aggrieved Employees.

8. **Release of Claims by Plaintiff, Aggrieved Employees, and the State of California.**

(a) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff and the State of California with respect to Aggrieved Employees, will be deemed to have knowingly and voluntarily released and forever discharged Defendant, including Defendant's partners, parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from the Action and from any and all claims, arising during the PAGA Period, for civil penalties under California Labor Code section 2698, *et seq.* ("PAGA") as well as any interest, fees, and costs available under PAGA, based on the factual allegations in the Operative Complaint and the PAGA Notice, including but not limited to, for failure to pay minimum, regular, and overtime wages, failure to provide compliant meal periods and associated premiums, failure to provide compliant rest periods and associated premiums, failure to timely pay wages during employment, failure to timely pay wages upon termination, failure to provide

compliant and accurate wage statements, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses and costs, in violation of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 and Industrial Welfare Commission Wage Orders, including *inter alia* Wage Orders 4-2001, and 16-2001 for both aggrieved employees subgroup A and subgroup B (collectively, the “Released Claims”).

(b) Upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, and except as to the rights and obligations created by this Settlement Agreement, Plaintiff, individually and on behalf of his heirs, executors, administrators, representatives, attorneys, successors and assigns, will be deemed to have knowingly and voluntarily released and forever discharged Released Parties, to the full extent permitted by law, from any and all claims of every nature whatsoever, known or unknown, suspected or unsuspected, which Plaintiff has or may have as of the date the Court has entered an order approving the Settlement Agreement. This broader release includes, but is not limited to, all claims arising directly or indirectly from Plaintiff’s employment with Defendant and the termination of that employment, including without limitation claims arising under federal, state, or local laws and claims for unpaid wages, penalties, liquidated damages, breach of contract, breach of the implied covenant of good faith and fair dealing, infliction of emotional distress, wrongful or retaliatory discharge, harassment, discrimination, defamation, impairment of economic opportunity, and violations of public policy, the Fair Labor Standards Act, the California Labor Code, the California Fair Employment and Housing Act, the California Business and Professions Code, the California Constitution, the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990. With respect to those claims released by Plaintiff in an individual capacity, Plaintiff acknowledges and waives any and all rights and benefits available under California Civil Code Section 1542, which provides:

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.

Plaintiff understands and agrees that claims or facts in addition to or different from those which are now known or believed by his to exist may hereafter be discovered. It is Plaintiff’s intention to, upon the date the Court has entered an order approving the Settlement Agreement and full funding of the Total Settlement Amount, settle fully and release all claims he now has against the Released Parties, whether known or unknown, suspected or unsuspected. Notwithstanding the above, the general release by Plaintiff shall not extend to claims for workers’ compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

9. **Governing Law and Interpretation.**

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California. Should any non-material provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction

and cannot be modified to be enforceable such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party reserves the right to institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing Party in that action shall be entitled to recover reasonable attorney's fees and costs from the non-prevailing Party.

10. **Amendment.** This Settlement Agreement may not be modified, altered or changed except in writing and signed by both Parties' counsel, wherein specific reference is made to this Settlement Agreement, subject to approval by the Court.

11. **Miscellaneous.**

(a) The Parties agree to stay all proceedings in the Action, including with respect to California Code of Civil Procedure section 583.310, except such proceedings necessary to implement and complete the Settlement, pending approval of the Settlement.

(b) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. A signature made on a faxed or electronically transmitted copy of the Settlement Agreement or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(c) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

(d) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel under the auspices of mediator, the Honorable S. James Otero (Ret.). In the event of vagueness, ambiguity or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it but shall be construed as if both Parties prepared it jointly, and the Parties may present their disputes to the mediator to resolve any vagueness, ambiguity, or uncertainty.

(e) If Plaintiff or Defendant fail to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement. The Settlement Agreement remains in full force and effect anyway.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES, AND TO RECEIVE THE CONSIDERATION SET FORTH ABOVE, PLAINTIFF AND DEFENDANT, FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Date: 04/14/2024, 2024

Electronically Signed: 2024-04-14 19:17:36 UTC - 35 151 38 33
Nintex AssureSign® Keith Lay 36da3db6-48d4-42b-b14f-b14e01859923

Keith Lay
Individually and On Behalf of
the State of California with Respect to Aggrieved
Employees

Robert Heely Construction, L.P.

Date: _____, 2024

Name: _____

Title: _____

Approved as to form and content.

LAWYERS FOR JUSTICE, PC

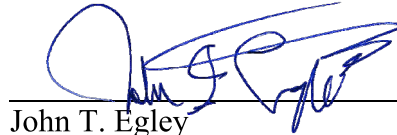
Date: April 15, 2024



Arby Aiwanian
Joanna Ghosh
Tara Zabehi
Attorneys for Plaintiff Keith Lay

CALL & JENSEN, APC

Date: April 9, 2024



John T. Egley
Attorneys for Defendant Robert Heely
Construction, L.P.

Date: _____, 2024

Keith Lay
Individually and On Behalf of
the State of California with Respect to Aggrieved
Employees

Robert Heely Construction, L.P.

Date: 4/10/, 2024

Name: Veraig Bonner
Title: LEO

Approved as to form and content.

LAWYERS FOR JUSTICE, PC

Date: _____, 2024

Arby Aiwarzian
Joanna Ghosh
Tara Zabehi
Attorneys for Plaintiff Keith Lay

CALL & JENSEN, APC

Date: _____, 2024

John T. Egley
Attorneys for Defendant Robert Heely
Construction, L.P.

EXHIBIT 2

March 30, 2020

BY ONLINE SUBMISSION

California Labor & Workforce Development Agency
PAGAfilings@dir.ca.gov

Re: *ROBERT HEELY CONSTRUCTION, L.P.*

Dear Representative:

We have been retained to represent Keith Lay against Robert Heely Construction, L.P. (including any and all affiliates, subsidiaries, parents, directors, officers, and employees) (collectively referred to as “Robert Heely”) for violations of California wage-and-hour laws. Mr. Lay seeks penalties for violations of the California Labor Code, which are recoverable under California Labor Code section 2698, et seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”) and all other remedies available under PAGA, including an amount sufficient to recover underpaid wages pursuant to Labor Code section 558.

Mr. Lay seeks these remedies on behalf of the State of California and “aggrieved employees,” as defined herein. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Robert Heely employed Mr. Lay as an hourly-paid/non-exempt employee, and as a salaried employee misclassified as “exempt” in the State of California.

The “aggrieved employees” that Mr. Lay may seek penalties on behalf of are: (a) all current and former hourly-paid or non-exempt individuals who were employed by any of the above-referenced entities within the State of California (“aggrieved employees subgroup A”), and (b) all current and former salaried planners/schedulers misclassified as “exempt” who were employed by any of the above-referenced entities within the State of California (“aggrieved employees subgroup B”).

With regard to aggrieved employees subgroup A, based on the following facts and theories, Robert Heely has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, and 16-2001. With regard to aggrieved employees subgroup B, based on the following facts and theories, Robert Heely has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law,

California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and IWC Wage Orders including *inter alia*, Wage Orders 4-2001, and 16-2001.

Mr. Lay and the other aggrieved employees subgroup B did not and/or do not customarily and regularly exercise discretion and independent judgment in matters of consequence to Robert Heely's business and were not and/or are not "primarily engaged" (more than one-half of the employee's work time) in performing managerial tasks. Furthermore, Mr. Lay and the other aggrieved employees subgroup B did not and/or do not spend at least half of their work time doing office or non-manual work directly related to managerial policies or the general business operations of Robert Heely. Therefore, Mr. Lay and other aggrieved employees subgroup B were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked because Robert Heely misclassified them as "exempt."

Robert Heely required aggrieved employees to perform work before their scheduled shifts, after their scheduled shifts, during off-the-clock meal breaks, and/or during rest breaks and failed to compensate aggrieved employees for this time.

California Labor Code sections 510 and 1198 require employers to pay time-and-a-half or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates at one-and-one-half times or double the regular rate of pay, including additional remuneration. During the relevant time period, Mr. Lay and other aggrieved employees subgroup A worked in excess of 8 hours in a day and 40 hours in a week without overtime compensation. Additionally, during the relevant time period, Mr. Lay and other aggrieved employees subgroup B worked in excess of 8 hours in a day and 40 hours in a week without overtime compensation because Robert Heely misclassified them as "exempt." Therefore, Mr. Lay and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each meal or rest period that is not provided. During the relevant time period, Robert Heely required Mr. Lay and other aggrieved employees subgroup A to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods. Additionally, during the relevant time period, Robert Heely required Mr. Lay and other aggrieved employees subgroup B to work during meal and rest periods and failed to compensate them properly for non-compliant meal and rest periods including, *inter alia*, short, late, interrupted, and missed meal and rest periods because Robert Heely misclassified them as "exempt."

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at

the time of quitting. During the relevant time period, Robert Heely failed to pay Mr. Lay and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 202, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Robert Heely failed to pay Mr. Lay and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Robert Heely did not provide Mr. Lay and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Robert Heely were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include the total hours worked by Mr. Lay and other aggrieved employees, including time spent working off-the-clock and during meal and rest periods as discussed above.

California Labor Code sections 551 and 552 require that every person employed in any occupation of labor is entitled to one day's rest in a seven-day workweek, that no employer of labor shall cause his employees to work more than six days in a workweek, and that an employer shall pay a civil penalty in the amounts of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation. During the relevant time period, Mr. Lay and the aggrieved employees were required to regularly and/or consistently work in excess of six (6) days in a workweek. During the relevant time period, Mr. Lay and the aggrieved employees were required to work in excess of thirty (30) hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which they were required to work in excess of six (6) days. During the relevant time period, Mr. Lay and the aggrieved employees were required to work in excess of six (6) days in a workweek without accumulating or being provided the opportunity to take at least one (1) day of rest, and when Mr. Lay and the aggrieved employees accumulated days of rest, they were not actually provided the opportunity to take the equivalent of one (1) day's rest in seven (7) during each calendar month.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.

These records shall be kept with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years. During the relevant time period, Robert Heely failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Mr. Lay and other aggrieved employees, including earned and unpaid minimum, overtime, and premium wages as discussed above.

California Labor Code sections 1194, 1197, and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, Robert Heely did not provide Mr. Lay and other aggrieved employees subgroup A with the minimum wages to which they were entitled for work performed “off-the-clock.” Additionally, during the relevant time period, Robert Heely did not pay Mr. Lay or other aggrieved employees subgroup B with the minimum wages to which they were entitled for work performed “off-the-clock” because Robert Heely misclassified them as “exempt.”

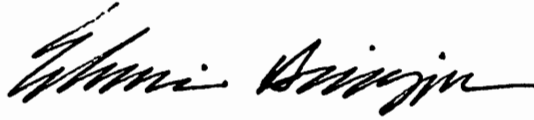
California Labor Code section 1198 provides that “The employment of any employee ... under conditions of labor prohibited by the [Industrial Wage Orders] is unlawful.” The applicable Industrial Wage Orders, including *inter alia*, Wage Orders 4-2001, and 16-2001, require that for each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay. Further, if an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay. During the relevant time period, Robert Heely failed to pay Mr. Lay and other aggrieved employees half the usual or scheduled day’s work in an amount no less than two (2) hours nor more than four (4) hours at the employee’s regular rate of pay for workdays in which Mr. Lay and the other aggrieved employees reported to work and were furnished less than half the usual or scheduled day’s work. During the relevant time period, Robert Heely failed to pay Mr. Lay and other aggrieved employees for two (2) hours at the employee’s regular rate of pay on days in which Mr. Lay and the other aggrieved employees were required to report for work a second time in one workday and were furnished less than two (2) hours of work upon the second reporting.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Lay and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by Robert Heely.

Therefore, on behalf of all aggrieved employees, Mr. Lay seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the Labor and Workforce Development Agency, for violation of the California Labor Code pursuant to PAGA.

If you have any questions or require additional information, please do not hesitate to contact us.
Thank you for your attention to this matter and the noble cause you advance each and every day.

With kind regards,

A handwritten signature in black ink, appearing to read "Edwin Aiwanian", with a stylized, flowing script.

Edwin Aiwanian, Esq.

Cc: (By U.S. Certified Mail / Return Receipt Requested)

Robert Heely Construction, L.P.
c/o T. Scott Belden
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Paso Robles, CA 93446

(By U.S. Mail – Under Separate Cover with Filing Fee Enclosed)

Department of Industrial Relations Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

EXHIBIT 3

LAWYERS for JUSTICE PC CASE COST DETAIL
Lay v. Robert Heely Construction (PAGA)

<u>Date</u>	<u>Payee</u>	<u>Expense Description</u>	<u>Amount</u>
3/30/2020	Labor & Workforce Development Agency	PAGA Filing Fee	75.00
3/30/2020	U.S. Postmaster	Postage	16.40
4/17/2020	General Logistics Systems US, Inc.	Courier Service	13.38
4/23/2020	General Logistics Systems US, Inc.	Courier Service	11.93
6/8/2020	Legal Document Server, Inc.	Attorney Service	28.98
6/8/2020	San Luis Obispo Superior Court	Complaint Filing Fee	435.00
6/8/2020	San Luis Obispo Superior Court	Complex Filing Fee	1,000.00
6/19/2020	Legal Document Server, Inc.	Attorney Service	150.00
6/29/2020	Legal Document Server, Inc.	Attorney Service	150.00
7/21/2020	Legal Document Server, Inc.	Attorney Service	14.60
9/1/2020	FedEx Express	Courier Service	21.65
9/9/2020	General Logistics Systems US, Inc.	Courier Service	16.07
9/18/2020	Legal Document Server, Inc.	Attorney Service	14.60
9/25/2020	Legal Document Server, Inc.	Attorney Service	15.85
9/25/2020	San Luis Obispo Superior Court	Stipulation & Order Fee	20.00
10/5/2020	Legal Document Server, Inc.	Attorney Service	14.60
2/7/2022	Jams, Inc.	Mediation Fee	9,650.00
3/29/2022	Legal Document Server, Inc.	Attorney Service	36.10
3/30/2022	Legal Document Server, Inc.	Attorney Service	14.75
4/14/2022	Legal Document Server, Inc.	Attorney Service	14.75
8/17/2022	Legal Document Server, Inc.	Attorney Service	15.50
11/1/2022	Legal Document Server, Inc.	Attorney Service	15.50
3/9/2023	Legal Document Server, Inc.	Attorney Service	15.50
3/10/2023	Legal Document Server, Inc.	Attorney Service	195.00
3/13/2023	Legal Document Server, Inc.	Attorney Service	79.55
3/21/2023	Legal Document Server, Inc.	Attorney Service	15.50
4/10/2023	Coalition Court Reporters	Court Reporter	771.20
4/26/2023	Legal Document Server, Inc.	Attorney Service	15.70
4/26/2023	Legal Document Server, Inc.	Attorney Service	250.00
5/26/2023	Coalition Court Reporters	Court Reporter	777.60
1/25/2024	Legal Document Server, Inc.	Attorney Service	186.95
1/31/2024	Legal Document Server, Inc.	Attorney Service	11.95
2/7/2024	Legal Document Server, Inc.	Attorney Service	15.55
2/29/2024	Legal Document Server, Inc.	Attorney Service	27.50
Total:			14,106.66