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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JOSE MARTINEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

SOUTHLAND ENERGY SYSTEMS, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 21STCV06911

*[Assigned for all purposes to the Hon. Stuart M. Rice,
Dept. SSC-1]*

**PLAINTIFF'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 14, 2025
Dept.: SSC-1

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 Plaintiff Jose Martinez (“Plaintiff”), individually and on behalf of a class of similarly situated
3 individuals, hereby submit this Supplemental Brief in Support of Plaintiff’s Motion for Preliminary
4 Approval of Class Action Settlement (the “Motion”).

5 **I. PROCEDURAL HISTORY**

6 Plaintiff filed his Motion for Preliminary Approval of Class Action Settlement on October 8,
7 2024, setting it for hearing on January 31, 2025. The Court advanced the hearing to January 28, 2025.

8 On January 28, 2025, the Court issued a Checklist for Preliminary Approval of Class Action
9 Settlement detailing the issues that need to be addressed in subsequent briefing. Consistent therewith,
10 Plaintiff hereby submits the instant supplemental brief (and accompanying declaration) to address the
11 issues identified by the Court. Each of the issues are addressed in the same order as they were identified
12 by the Court in its Checklist.

13 In connection with addressing the issues identified by the Court, the Parties have executed an
14 Amended Class Action Settlement Agreement and have modified the Notice Packet. The following
15 documents are being submitted concurrently herewith as Exhibits to the Supplemental Declaration of
16 Scott M. Lidman (“Supp. Lidman Decl.”), as follows:

17 Attached as **Exhibit A** to the Supp. Lidman Decl. is the Amended Class Action Settlement
18 Agreement, with exhibit and executed by counsel.

19 Attached as **Exhibit B** to the Supp. Lidman Decl. is the redlined version of the Amended Class
20 Action Settlement and Court Approved Notice of Class Action Settlement and Hearing Date for Final
21 Court Approval.

22 Attached as **Exhibit C** to the Supp. Lidman Decl. is proof of submission of the Class Action
23 Settlement Agreement to the LWDA.

24 Attached as **Exhibit D** to the Supp. Lidman Decl. is proof of submission of the Amended Class
25 Action Settlement Agreement to the LWDA.

26 **II. ISSUES IDENTIFIED IN THE COURT’S CHECKLIST**

27 **A. FEE SPLIT**

28 In the Checklist the Court states, “Provide further information regarding any fee splitting
agreement other than whether the client has given written approval. (*Mark v. Spencer* (2008) 166

1 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of Court, rule 3.769.) What is the agreed
2 fee split herein?

3 The fee split herein is as follows:

4 31% Lidman Law, APC; 46.5% Haines Law Group, APC and Michael Burgis & Associates,
5 PC 22.5%. Michael Burgis & Associates is the referring attorney.

6 **B. SETTLEMENT AGREEMENT**

7 *1. Release of Class Claims:*

8 In the Checklist the Court states, “Scope: The scope of any release given by class members
9 must be defined with precision and clarity. Any released claims not presented directly in the operative
10 complaint should be based on the facts alleged in the operative complaint. (*See Amaro v. Anaheim*
11 *Area Mgmt.* (2021) 69 Cal.App.5th 521, 537 and FN. 5; *Uribe v. Crown Building Maintenance Co.* 70
12 Cal.App.5th 986, 1005.) The releases in ¶5.2 are overbroad as to scope. Class Members should not
13 release any claims under the PAGA. Revise accordingly.”

14 The Parties have revised ¶5.2 by deleting “and (7) Civil Penalties Under the Labor Code
15 Private Attorneys General Action of 2004 (Labor Code Private Attorneys General Act of 2004 (Labor
16 Code § 2698 *et seq.*)”

17 This change was also mirrored in the proposed Class Notice. See Exhibits A-B to Supp.
18 Lidman Decl.

19 *2. Release of PAGA Claim*

20 In the Checklist, the Court states: “Class cases which include a PAGA claim should have a
21 separate release for the PAGA claim tied to the facts alleged in the notice given to the LWDA. *Id.*
22 The releases in ¶5.3 are overbroad as to scope. Aggrieved Employees should only release claims for
23 penalties under the PAGA and not the underlying wage and hour penalties. Revise to make this
24 clear.”

25 The Parties have revised ¶5.3 by stating the following: “The claims for penalties under the
26 PAGA being released include, : (1) failure to pay overtime wages; (2) failure to pay minimum
27 wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to
28 provide rest periods or provide premium wages in lieu thereof; and (5) failure to provide accurate,
itemized wage statements, and any and all related claims for attorneys’ fees and costs.

1 This change has also been made to the revised Class Notice. See Exhibits A-B to Supp.
2 Lidman Decl.

3 **C. Monetary Terms of Settlement**

4 1. *Defendant's Share of Taxes*

5 In the Checklist, the Court states: "If wages are involved, explain how Defendant's share of
6 taxes will be paid. Why is it proper for Defendant's share of employer-side payroll taxes to come from
7 the GSA?"

8 Defendant's employer-side payroll taxes will be paid from the GSA. It is proper for
9 Defendant's share of payroll taxes to be deducted from the GSA because the Parties negotiated the
10 instant settlement and agreed to the GSA with the understanding that the GSA would include the
11 employer's portion of payroll taxes. This agreement was a material term that was specifically
12 bargained for in connection with agreeing to the settlement for the GSA of [REDACTED]. Even with
13 Defendant's estimated share of payroll taxes to be approximately [REDACTED], the estimated average
14 individual payment for the approximate 101 Class Members is still nearly [REDACTED].

15 Defendant does not have insurance coverage for payment of the GSA which is being paid out-
16 of-pocket. Further, the potential for an increase in the estimated tax amount would prejudice and could
17 substantially alter the Defendant's financial commitment out-of-pocket. This Court is aware of facts
18 relevant to its Order for sealing of records and publicly filed documents where are applicable to the
19 payment of employer-side-taxes from the GSA.

20 Moreover, Defendant points to and interprets Superior Court approval of employer-side payroll
21 taxes paid from the GSA in other actions as persuasive of why it is proper for Defendant's employer-
22 side payroll taxes to be from the GSA in the instant case. See *Kroll v Regus Mgmt Gpr, LLC* 2018
23 Cal.Super. LEXIS 2887 [Joint Stipulation Regarding Settlement Administration Procedure, Page 3,
24 lines 19-26; Page 4, lines 21-27; Page 5, lines 1-2]; *Wright v. Future Energy Corp.* 2020 Cal.Super.
25 LEXIS 21275.

26 **D. Miscellaneous**

27 The Checklist states: Assure the Settlement Agreement and Notice are consistent and that the
28 Settlement Agreement (including revised versions) has been signed by all parties and counsel.

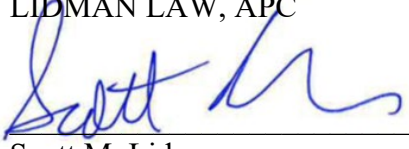
Carefully proofread both. The Settlement Agreement is currently only signed by the parties. It must also be signed by each party's counsel for court approval.

The Parties and their counsel have signed the Amended Class Action Settlement Agreement. See Exhibit A to Supp. Lidman Decl.

III. CONCLUSION

For the foregoing reasons and the reasons discussed in Plaintiff's Motion, Plaintiff respectfully requests that the Court preliminarily approve the proposed Amended Class Action Settlement Agreement, provisionally certify the Settlement Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: February 11, 2025

Respectfully submitted,
LIDMAN LAW, APC
By: 
Scott M. Lidman
Attorney for Plaintiff
JOSE MARTINEZ