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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MARIO ALVARADO, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01286100-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Melissa R. McCormick, Dept. CX104]*

**SUPPLEMENTAL DECLARATION OF
ANDREW J. ROWBOTHAM IN
SUPPORT OF PLAINTIFF'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: October 24, 2024
Time: 2:00 p.m.
Dept.: CX104

Action Filed: October 12, 2022
Trial Date: None Set

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I, Andrew J. Rowbotham, declare as follows:

1. I am a Senior Associate with Haines Law Group, APC, and counsel for the named Plaintiff Mario Alvarado (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I submit this declaration in support of Plaintiff’s Supplemental Brief in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement, filed in response to the Court’s May 30, 2024 Tentative Ruling (“Tentative”) continuing the hearing on Plaintiff’s Motion for Preliminary Approval. A true and correct copy of the Tentative is attached hereto as **Exhibit 11**.

3. In response to the Court’s Tentative, the Parties have revised the Stipulation of Settlement. True and correct copies of the revised Stipulation of Settlement in a “clean” and “tracked changes” format are attached hereto as **Exhibits 1 and 2** respectively.

4. The Parties have similarly revised the proposed Notice of Class Action and PAGA Settlement, Request for Exclusion Form, and Objection Form (collectively, “Notice Packet”) to address the issues raised by the Court in the Tentative. True and correct copies of the revised Notice Packet, in a “clean” and “tracked changes” format are attached hereto as **Exhibits 3 and 4** respectively.

5. Defendant's counsel (Stacie Turner, Esq.) provided my office with signed declarations attesting that neither Defendant nor Defendant's counsel are aware of any other class or collective actions that assert similar claims as those in this action. Additionally, both Defendant and its counsel have no interest in the proposed cy pres recipient, Legal Aid SoCal, including its governance. True and correct copies of the Declarations of Diana Petersen (Defendant's Director of Administration) and Stacie Turner, Esq. (Defendant's Counsel) are attached hereto as **Exhibit 5 and 6** respectively.

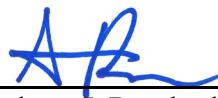
1 6. Plaintiff Mario Alvarado has revised his declaration submitted in support of
2 preliminary approval to confirm he also does not have an interest in the proposed cy pres recipient,
3 Legal Aid SoCal, including its governance. A true and correct copy of Plaintiff Mario Alvarado's
4 declaration submitted in support of class action settlement is attached hereto as **Exhibit 7**.

5 7. I confirm that after conducting a reasonable inquiry, I am not aware of any class,
6 representative or other collective action in any court that asserts claims similar to those asserted
7 in this action. I further confirm that neither myself, nor any member of Haines Law Group, APC
8 have any interest in the proposed cy pres recipient, Legal Aid SoCal, including its governance. I
9 further confirm that neither myself, nor any member of Haines Law Group, APC have any interest
10 in the proposed settlement administrator, CPT Group, Inc.

11 8. Plaintiff has lodged a revised [Proposed] Order Granting Preliminary Approval of
12 Class Action and PAGA Settlement concurrently with the filing of his Supplemental Brief, which
13 includes a proposed realistic Final Approval Hearing date March 6, 2025, at 2:00 p.m. True and
14 correct copies of the revised [Proposed] Order Granting Preliminary Approval of Class Action
15 and PAGA Settlement in a "clean" and "tracked changes" format are attached hereto as **Exhibit**
16 **8 and 9** respectively.

17 9. In light of the proposed changes made to the Parties Settlement, as outlined herein,
18 Plaintiff has submitted the Stipulation of Settlement, revised Notice Packet, and revised
19 [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement to the
20 California Labor and Workforce Development Agency ("LWDA"). A true and correct copy of
21 Plaintiff's supplemental settlement submission and the LWDA's confirmation of receipt is
22 attached hereto as **Exhibit 10**.

23 I declare under penalty of perjury under the laws of the United States and the state of
24 California that the foregoing is true and correct. Executed on October 11, 2024, at El Segundo,
25 California.

26 

27 _____
28 Andrew J. Rowbotham

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Mario Alvarado (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), and Defendant Red Pointe Roofing, L.P. (“Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Stacie L. Turner and Suhail Rajakumar of Cruser, Mitchell, Novitz, Sanchez, Gaston, & Zimet, LLP.

On October 12, 2022, Plaintiff filed a class action complaint against Defendant in Orange County Superior Court titled *Mario Alvarado v. Red Pointe Roofing, L.P.*, Case No. 30-2022-01286100-CU-OE-CXC (the “Action”). The Action alleges that Defendant: (1) failed to pay all minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) failed to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (3) failed to provide all meal periods (Labor Code §§ 226.7, 512, 558); (4) failed to authorize and permit all rest periods (Labor Code §§ 226.7, 516, 558); (5) failed to reimburse necessary business expenses (Labor Code § 2802, 2804); (6) failed to issue accurate, itemized wage statements (Labor Code § 226 *et seq.*); (7) failed to timely pay all final wages due upon separation of employment (Labor Code §§ 201-203); and (8) engaged in unfair competition (Business and Professions Code § 17200). The following day, on October 13, 2022, Plaintiff notified Defendant and the California Labor & Workforce Development Agency (“LWDA”) of his intent to seek civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”) based on the above alleged Labor Code violations. On December 19, 2022, after Plaintiff exhausted his administrative remedies with the LWDA, Plaintiff amended the complaint to add a cause of action for civil penalties under the PAGA.

Given the uncertainty of litigation, and without Defendant making any admission as to the merits of any of the claims asserted, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendant in California who worked at any time between October 12, 2018, and the date of preliminary approval (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Code of Civil Procedure § 382. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Members.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate that the PAGA Members shall be defined as:

All current and former non-exempt employees of Defendant in California who worked at any time between October 12, 2021, and the date of preliminary approval (the “PAGA Period”).

3. **Release by Settlement Class Members, PAGA Members, and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively “Defendant’s Releasees”) as follows:

- A. All members of the Settlement Class who do not opt-out will release and discharge Defendant and Defendant’s Releasees from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Action, or which could have been alleged based on the factual allegations therein, that arose during the Class Period (collectively the “Released Claims”). The time period covered by this release will mirror the Class Period and will become effective upon the Effective Date.
- B. PAGA Members, regardless of whether they opt-out of the Settlement, will release and discharge Defendant and Defendant’s Releasees from all civil penalties owed under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the operative complaint in the Action (or Plaintiff’s letter to the LWDA dated October 13, 2022) that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release will mirror the PAGA Period and will become effective upon the Effective Date.
- C. Plaintiff agrees to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, 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.

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers’ compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board,

or participation in an administrative investigation or proceeding. The waiver and release in this Settlement Agreement does not apply to rights or claims arising out of this Settlement Agreement after this Settlement Agreement is executed by Plaintiff and rights or claims arising of this Settlement Agreement.

- D. The “Effective Date” of this Settlement is the later of: (a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed; and (d) Defendant’s deposit of the entire Maximum Settlement Amount to the mutually selected third party administrator.

4. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a “Maximum Settlement Amount” of \$650,000.00 in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage CPT Group, Inc. as the “Settlement Administrator to administer this Settlement.
- B. The Maximum Settlement Amount and the employer’s side of payroll taxes on the portion allocated as wages shall be paid by Defendant within 30 days after the Court grants final approval of the settlement, assuming no objections or appeals, or by September 5, 2024, whichever is later.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$10,000.00;
 - (3) Up to \$7,500.00 for Plaintiff’s Class Representative Enhancement Payment in recognition for Plaintiff’s contributions to the Action and Plaintiff’s service to the Settlement Class;
 - (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$216,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$20,000.00; and
 - (5) \$50,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties (\$37,500.00), will be payable to the LWDA and the remaining 25% (\$12,500.00), will be payable to the PAGA Members as described below.

- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class members who do not opt-out.
 - E. **Escalator Clause.** Defendant represents that there are an estimated 23,000 workweeks worked by the Settlement Class members during the Class Period. If the number of workweeks worked during the Class Period is more than 10% greater than this figure (i.e., if there are 25,300 or more workweeks worked during the Class Period), Defendant agrees to increase the Maximum Settlement Amount on a proportional basis above 10% (i.e., if there was 11% increase in the number workweeks worked, Defendant would increase the Maximum Settlement Amount by 1%).
 - F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes on any amounts designated as wages, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.
5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:
 - i. PAGA Amount: The \$12,500.00 payable to PAGA Members as PAGA civil penalties shall be designated as the "PAGA Amount." Each individual who was employed by Defendant at any time between October 12, 2021 and the date of preliminary approval, shall receive a portion of the PAGA Amount based on the number of pay periods that he or she worked during the aforementioned time period compared to the total number of pay periods worked by all PAGA Members during the aforementioned time period.
 - ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time between October 12, 2021 and the date of preliminary approval, shall receive a portion of the Wage Statement Amount based on the number of workweeks that he or she worked during the aforementioned time period

compared to the total number of workweeks worked by all participating Settlement Class members during the aforementioned time period.

- iii. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal shares to all participating Settlement Class members who separated their employment with Defendant on or after October 12, 2019.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on the number of workweeks that he or she worked during the aforementioned time period compared to the total number of workweeks worked by all participating Settlement Class members during the aforementioned time period.
- C. Within 10 business days following the funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment, and will prepare and mail Individual Settlement Payments to Settlement Class Members. The Settlement Administrator will also mail any amounts awarded to Plaintiff for the Class Representative Enhancement Payment as well as the amounts awarded to Class Counsel for attorneys’ fees and costs by the same deadline.
- D. Each Individual Settlement Payment shall be allocated as 1/3 wages and 2/3 penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Payments made to PAGA Members will be attributed 100% to penalties and paid via an IRS Form 1099. Settlement Class Members will be responsible for all employee-side taxes due on Individual Settlement Payments.
- E. Defendant shall fully discharge its obligations to those Settlement Class members to whom an Individual Settlement Payment is made, regardless of whether such checks are actually received and/or negotiated by Settlement Class members. Any check that is not negotiated within 180 days of mailing to a Settlement Class member shall be distributed by the Settlement Administrator to the *cy pres*, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange County.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost, stolen, undelivered or misdelivered checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$216,666.67. Additionally, Class Counsel will request an award of actual

costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$7,500.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of CPT Group, Inc. as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$10,000.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class members, for calculating Individual Settlement Payments, and for preparing all checks and mailings. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Mario Alvarado as Class Representative for the Settlement Class;
- D. Approving CPT Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Payment), and which counsel for all Parties shall mutually agree upon before submitting to the Court, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 10 business days of the Court signing an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, addresses, phone numbers, social security numbers, positions held, dates of employment, and relevant workweek information for each Settlement Class member during the Class Period and each PAGA Member during the PAGA Period.
- B. Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement,

except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- ii. PAGA Members may not opt-out of the release of PAGA claims (as described in Paragraph 3.B.) and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment.
 - iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.
 - iv. All Request for Exclusions shall be submitted to the Court at the time Plaintiff submits the Motion for Final Approval.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Any such written objections must contain the Settlement Class Member's name, address, and last four digits of his or her social security number. The objection must also be signed by the Settlement Class member. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing. Settlement Class Members need not submit written objections to be heard by the Court at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an

adjustment is warranted. The Settlement Administrator shall make an initial determination regarding the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will request the Court make a final determination regarding the dispute. Additionally, the Parties will file with the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of the disputes, and although the Settlement Administrator may make the initial decision regarding claim disputes, the Court may review any decision made by the Settlement Administrator regarding a claim dispute.

- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Effective Date does not occur or Defendant fails to fully fund the Settlement pursuant to Paragraph 4.B. above, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party through the date of preliminary approval. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff:	Fletcher W. Schmidt of Haines Law Group, APC 2155 Campus Drive, Suite 180, El Segundo, CA 90265 fschmidt@haineslawgroup.com
if to Defendant:	Stacie Turner of Cruiser, Mitchell, Novitz, Sanchez, Gaston, & Zimet, LLP 800 Wilshire Boulevard, 15th Floor, Los Angeles, California 90017 sturner@cmlawfirm.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement Action.** In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. **Continuing Jurisdiction.** The Parties stipulate that, pursuant to California Code of Civil Procedure § 664.6, the Orange County Superior Court will retain jurisdiction over the Parties to enforce this Settlement Agreement until full performance of the terms of the settlement has been completed.

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[SIGNATURES BEGIN ON FOLLOWING PAGE]

DATED: Oct 10, 2024

RED POINTE ROOFING, L.P.

By: 
Name: Aaron Martin
Title: President

DATED:

PLAINTIFF MARIO ALVARADO

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: October 10, 2024

CRUSER, MITCHELL, NOVITZ, SANCHEZ,
GASTON, & ZIMET, LLP

By: 
Stacie Turner
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Fletcher W. Schmidt
Attorneys for Plaintiff

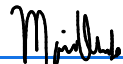
DATED:

RED POINTE ROOFING, L.P.

By: _____
Name: _____
Title: _____

DATED: 10/10/24

PLAINTIFF MARIO ALVARADO

By:  _____
Mario Alvarado (Oct 10, 2024 13:11 CDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

CRUSER, MITCHELL, NOVITZ, SANCHEZ,
GASTON, & ZIMET, LLP

By: _____
Stacie Turner
Attorneys for Defendant

DATED: 10/10/24

HAINES LAW GROUP, APC

By:  _____
Fletcher W. Schmidt
Attorneys for Plaintiff

EXHIBIT 2

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Mario Alvarado (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), and Defendant Red Pointe Roofing, L.P. (“Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Stacie L. Turner and Suhail Rajakumar of Cruser, Mitchell, Novitz, Sanchez, Gaston, & Zimet, LLP.

On October 12, 2022, Plaintiff filed a class action complaint against Defendant in Orange County Superior Court titled *Mario Alvarado v. Red Pointe Roofing, L.P.*, Case No. 30-2022-01286100-CU-OE-CXC (the “Action”). The Action alleges that Defendant: (1) failed to pay all minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) failed to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (3) failed to provide all meal periods (Labor Code §§ 226.7, 512, 558); (4) failed to authorize and permit all rest periods (Labor Code §§ 226.7, 516, 558); (5) failed to reimburse necessary business expenses (Labor Code § 2802, 2804); (6) failed to issue accurate, itemized wage statements (Labor Code § 226 *et seq.*); (7) failed to timely pay all final wages due upon separation of employment (Labor Code §§ 201-203); and (8) engaged in unfair competition (Business and Professions Code § 17200). The following day, on October 13, 2022, Plaintiff notified Defendant and the California Labor & Workforce Development Agency (“LWDA”) of his intent to seek civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”) based on the above alleged Labor Code violations. On December 19, 2022, after Plaintiff exhausted his administrative remedies with the LWDA, Plaintiff amended the complaint to add a cause of action for civil penalties under the PAGA.

Given the uncertainty of litigation, and without Defendant making any admission as to the merits of any of the claims asserted, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendant in California who worked at any time between October 12, 2018, and the date of preliminary approval (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Code of Civil Procedure § 382. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Members.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate that the PAGA Members shall be defined as:

All current and former non-exempt employees of Defendant in California who worked at any time between October 12, 2021, and the date of preliminary approval (the “PAGA Period”).

3. **Release by Settlement Class Members, PAGA Members, and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively “Defendant’s Releasees”) as follows:

- A. All members of the Settlement Class who do not opt-out will release and discharge Defendant and Defendant’s Releasees from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Action ~~(or Plaintiff’s letter to the LWDA dated October 13, 2022)~~, or which could have been alleged based on the factual allegations therein, that arose during the Class Period (collectively the “Released Claims”). The time period covered by this release will mirror the Class Period and will become effective upon the Effective Date.
- B. PAGA Members, regardless of whether they opt-out of the Settlement, will release and discharge Defendant and Defendant’s Releasees from all ~~claims, demands, rights, liabilities and causes of action~~ civil penalties owed under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the operative complaint in the Action (or Plaintiff’s letter to the LWDA dated October 13, 2022); ~~or which could have been alleged based on the factual allegations therein~~, that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release will mirror the PAGA Period and will become effective upon the Effective Date.
- C. ~~In light of Plaintiff’s Class Representative Enhancement Payment,~~ Plaintiff agrees to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, 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.

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising

under workers' compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board, or participation in an administrative investigation or proceeding. The waiver and release in this Settlement Agreement does not apply to rights or claims arising out of this Settlement Agreement after this Settlement Agreement is executed by Plaintiff and rights or claims arising of this Settlement Agreement.

- D. The "Effective Date" of this Settlement is the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed; and (d) Defendant's deposit of the entire Maximum Settlement Amount to the mutually selected third party administrator.

4. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a "Maximum Settlement Amount" of \$650,000.00 in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage CPT Group, Inc. as the "Settlement Administrator to administer this Settlement.
- B. The Maximum Settlement Amount and the employer's side of payroll taxes on the portion allocated as wages shall be paid by Defendant within 30 days after the Court grants final approval of the settlement, assuming no objections or appeals, or by September 5, 2024, whichever is later.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$10,000.00;
 - (3) Up to \$7,500.00 for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and Plaintiff's service to the Settlement Class;
 - (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$216,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$20,000.00; and
 - (5) \$50,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties (\$37,500.00), will be payable to the LWDA and the remaining 25% (\$12,500.00), will be payable to the PAGA Members as described below.

- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class members who do not opt-out.
 - E. **Escalator Clause.** Defendant represents that there are an estimated 23,000 workweeks worked by the Settlement Class members during the Class Period. If the number of workweeks worked during the Class Period is more than 10% greater than this figure (i.e., if there are 25,300 or more workweeks worked during the Class Period), Defendant agrees to increase the Maximum Settlement Amount on a proportional basis above 10% (i.e., if there was 11% increase in the number workweeks worked, Defendant would increase the Maximum Settlement Amount by 1%).
 - F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes on any amounts designated as wages, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.
5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:
 - i. PAGA Amount: The \$12,500.00 payable to PAGA Members as PAGA civil penalties shall be designated as the "PAGA Amount." Each individual who was employed by Defendant at any time between October 12, 2021 and the date of preliminary approval, shall receive a portion of the PAGA Amount based on the number of workweeks pay periods that he or she worked during the aforementioned time period compared to the total number of workweeks pay periods worked by all PAGA Members during the aforementioned time period.
 - ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time between October 12, 2021 and the date of preliminary approval, shall receive a portion of the Wage Statement Amount based on the number of

workweeks that he or she worked during the aforementioned time period compared to the total number of workweeks worked by all participating Settlement Class members during the aforementioned time period.

- iii. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal shares to all participating Settlement Class members who separated their employment with Defendant on or after October 12, 2019.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on the number of workweeks that he or she worked during the aforementioned time period compared to the total number of workweeks worked by all participating Settlement Class members during the aforementioned time period.
- C. Within 10 business days following the funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment, and will prepare and mail Individual Settlement Payments to Settlement Class Members. The Settlement Administrator will also mail any amounts awarded to Plaintiff for the Class Representative Enhancement Payment as well as the amounts awarded to Class Counsel for attorneys’ fees and costs by the same deadline.
- D. Each Individual Settlement Payment shall be allocated as 1/3 wages and 2/3 penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Payments made to PAGA Members will be attributed 100% to penalties and paid via an IRS Form 1099. Settlement Class Members will be responsible for all employee-side taxes due on Individual Settlement Payments.
- E. Defendant shall fully discharge its obligations to those Settlement Class members to whom an Individual Settlement Payment is made, regardless of whether such checks are actually received and/or negotiated by Settlement Class members. Any check that is not negotiated within 180 days of mailing to a Settlement Class member shall be distributed by the Settlement Administrator to the *cy pres*, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange County.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost, stolen, undelivered or misdelivered checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of up to one-third of the Maximum Settlement Amount, which is

currently estimated to be \$216,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$7,500.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of CPT Group, Inc. as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$10,000.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class members, for calculating Individual Settlement Payments, and for preparing all checks and mailings. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Mario Alvarado as Class Representative for the Settlement Class;
- D. Approving CPT Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Payment), and which counsel for all Parties shall mutually agree upon before submitting to the Court, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 10 business days of the Court signing an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, addresses, phone numbers, social security numbers, positions held, dates of employment, and relevant workweek information for each Settlement Class member during the Class Period and each PAGA Member during the PAGA Period.
- B. Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response

Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- ii. PAGA Members may not opt-out of the release of PAGA claims (as described in Paragraph 3.B.) and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment.

iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.

~~iii-iv.~~ All Request for Exclusions shall be submitted to the Court at the time Plaintiff submits the Motion for Final Approval.

- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Any such written objections must contain the Settlement Class Member's name, address, and last four digits of his or her social security number ~~and must state the legal and factual bases for objection~~. The objection must also be signed by the Settlement Class member. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing. Settlement Class Members need not submit written objections to be heard by the Court at the Final Approval Hearing.

- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such

dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall make an initial ~~determine~~ determination regarding the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to request the Court for a to make a final determination regarding the dispute. dispute. Additionally, the Parties will file with -the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of the disputes, and although the Settlement Administrator may make the initial decision regarding claim disputes, the Court may review any decision made by the Settlement Administrator regarding a claim dispute.

- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Effective Date does not occur or Defendant fails to fully fund the Settlement pursuant to Paragraph 4.B. above, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party through the date of preliminary approval. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff:	Fletcher W. Schmidt of Haines Law Group, APC 2155 Campus Drive, Suite 180, El Segundo, CA 90265 fschmidt@haineslawgroup.com
if to Defendant:	Stacie Turner of Cruser, Mitchell, Novitz, Sanchez, Gaston, & Zimet, LLP 800 Wilshire Boulevard, 15th Floor, Los Angeles, California 90017 sturner@cmlawfirm.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement Action.** In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. **Continuing Jurisdiction.** The Parties stipulate that, pursuant to California Code of Civil Procedure § 664.6, the Orange County Superior Court will retain jurisdiction over the Parties to enforce this Settlement Agreement until full performance of the terms of the settlement has been completed.

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[SIGNATURES BEGIN ON FOLLOWING PAGE]

DATED:

RED POINTE ROOFING, L.P.

By: _____
Name: _____
Title: _____

DATED:

PLAINTIFF MARIO ALVARADO

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

CRUSER, MITCHELL, NOVITZ, SANCHEZ,
GASTON, & ZIMET, LLP

By: _____
Stacie Turner
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Fletcher W. Schmidt
Attorneys for Plaintiff

EXHIBIT 3

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MARIO ALVARADO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California Limited
Partnership,

Defendant.

Case No. 30-2022-01286100-CU-OE-CXC

**NOTICE OF CLASS ACTION AND PAGA
SETTLEMENT**

To: All current and former non-exempt employees of Red Pointe Roofing, L.P. ("Red Pointe") in California who worked at any time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>.

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Red Pointe's records show that you were employed by Red Pointe as a non-exempt employee in California at some time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>> (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the class and representative action lawsuit identified at the top of this page ("Lawsuit"), to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <<ADMIN WEBSITE URL>>.

What is this case about?

Plaintiff Mario Alvarado ("Plaintiff") brought this Lawsuit against Red Pointe, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and Plaintiff's attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleges that Red Pointe: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to authorize and permit all rest periods; (5) failed to reimburse necessary business expenses; (6) failed to issue accurate, itemized wage statements; (7) failed to timely pay all final wages due upon separation of employment; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Private Attorneys General Act ("PAGA").

Red Pointe denies that it has done anything wrong. Red Pointe denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Red Pointe, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Red Pointe's best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Red Pointe provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Red Pointe, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Red Pointe, your decision about whether to participate in the Settlement will not affect your employment. California law and Red Pointe's policy strictly prohibit unlawful retaliation. Red Pointe will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff and Settlement Class Members:

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Ste 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Red Pointe:

CRUSER, MITCHELL, NOVITZ, SANCHEZ, GASTON & ZIMET, LLP

Stacie Turner (SBN 203831)
sturner@cmlawfirm.com
Suhail Rajakumar (SBN 327595)
srajakumar@cmlawfirm.com
800 Wilshire Boulevard, 15th Floor
Los Angeles, California 90017
Tel: (213) 689-8500
Fax: (213) 689-8501

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Red Pointe in California who worked at any time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Red Pointe, as described below in the “Release” section.

Red Pointe agreed to pay \$650,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative’s enhancement payment. Red Pointe will fund the Maximum Settlement Amount within 30 days of the Court granting final approval of the settlement, assuming no objections or appeals, or by September 5, 2024, whichever is later.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved CPT Group, Inc. to function as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Fund (which is currently estimated to be \$216,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through

Settlement finalization. Class Counsel will also ask for reimbursement of up to \$20,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative's Enhancement Payment. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as the Class Representative's enhancement payment. This is meant to compensate Plaintiff for the service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the individuals with PAGA standing (the "PAGA Members") as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) The 25% share of PAGA civil penalties (\$12,500.00) will be distributed to PAGA Members proportionally based on the number of pay periods each worked for Red Pointe in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>> (the "PAGA Period").
- (ii) 10% of the Net Settlement Amount will be distributed to Settlement Class Members proportionally based on the number of workweeks each worked for Red Pointe in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>.
- (iii) 10% of the Net Settlement Amount will be distributed in equal shares to Settlement Class Members who separated their employment with Red Pointe on or after October 12, 2019.
- (iv) The remainder of the Net Settlement Amount will be distributed to participating Settlement Class Members based on their proportionate number of workweeks worked between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. The Settlement Administrator will distribute any funds resulting from checks not cashed within the 180 day check cashing deadline to the designated cy pres, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange County.

Allocation and Taxes. Each Individual Settlement Payment will be allocated as 2/3 penalties and interest and 1/3 wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Payments made to PAGA Members will be attributed 100% to penalties and paid via an IRS Form 1099. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Red Pointe, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively "Released Parties") from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Lawsuit, or which could have been alleged based on the factual allegations therein, that arose during

the Class Period (collectively the “Released Claims”). The time period covered by this release will mirror the Class Period and will become effective upon the Effective Date (defined below).

PAGA Members, regardless of whether they opt-out of the Settlement, will release and discharge Red Pointe and the Released Parties from all civil penalties owed under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the operative complaint in the Lawsuit (or Plaintiff’s letter to the LWDA dated October 13, 2022), that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release will mirror the PAGA Period and will become effective upon the Effective Date.

Conditions of Settlement and “Effective Date”. The Settlement along with the associated releases are conditioned upon the occurrence of all of the following events: (i) the Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been given to the Settlement Class, providing them with an opportunity to dispute information contained in the Notices of Settlement Payment, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement.

The Settlement will become effective upon the later of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed; and (d) Red Pointe’s deposit of the entire Maximum Settlement Amount to the Settlement Administrator (“Effective Date”)

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and the number of pay periods that you worked during the PAGA Period. The information contained in Red Pointe’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator the attached “Request for Exclusion Form” postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Additionally, all Requests for Exclusion will be submitted to the Court. The Settlement Administrator shall make an initial determination regarding the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator, Class Counsel, and Red Pointe's Counsel cannot agree on a resolution, the Class Counsel and Red Pointe's Counsel will submit the dispute to the Court to make a final determination regarding the dispute. Additionally, Class Counsel and Red Pointe's Counsel will file with the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of the disputes, and although the Settlement Administrator may make the initial decision regarding claim disputes, the Court may review any decision made by the Settlement Administrator regarding a claim dispute.

PAGA Members may not opt-out of the release of PAGA claims and will thus receive payment for their share of PAGA civil penalties even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment. PAGA Members will be bound by the release in the above mentioned "PAGA Released Claims," regardless of whether they cash their checks for their share of PAGA civil penalties.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may fill out the attached "Objection Form" and mail it to the Settlement Administrator with your name, address, telephone number, last four digits of your social security number, and your signature. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd. Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing to object to the settlement, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd. Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the enhancement payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

If the Court grants Preliminary Approval of the Settlement, and later Final Approval of the Settlement, the Settlement Administrator will post the following documents on its website: i) the operative complaint; ii) the PAGA notice letter(s) to the LWDA (including Plaintiff's letter to the LWDA dated October 13, 2022); iii) the Settlement Agreement and any amendments; iv) the Notice Packet; v) the orders granting Preliminary and Final Approval; vi) and the Final Judgment and Order. The Settlement Administrator will post the above documents for at least 180 days at the following website address: <<ADMINISTRATOR WEBSITE INFO>>.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may view the online docket for this case using the online search at <https://civilwebshopping.occourts.org/Search.do#searchAnchor> and inputting the case number (01286100) and year filed (2022). You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, RED POINTE, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<**RESPONSE DEADLINE**>>.

NOTICE OF SETTLEMENT AWARD

ALVARADO v. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep your current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Red Pointe's records:

- (a) You worked _____ workweeks for Red Pointe as a non-exempt employee in California between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>;
- (b) There were _____ total workweeks worked by non-exempt employees in California between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>;
- (c) You worked _____ pay periods for Red Pointe as a non-exempt employee in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>;
- (d) There were _____ total pay periods worked by non-exempt employees in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>; and
- (e) You <<DID/DID NOT>> separate your employment with Red Pointe on or after October 12, 2019.

Based on the above, your Individual Settlement Payment is estimated to be \$ _____ and your PAGA payment is estimated to be \$ _____.

(IV) If you disagree with items (a) - (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Red Pointe's records, those records will control unless you are able to provide documentation that establishes that Red Pointe's records are mistaken. If there is a dispute about whether Red Pointe's information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____ Date: _____

REQUEST FOR EXCLUSION FORM

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [RESPONSE DEADLINE], ADDRESSED AS FOLLOWS:

CPT GROUP, INC.
MARIO ALVARADO V. RED POINTE ROOFING, L.P.
SETTLEMENT ADMINISTRATOR
<<ADMINISTRATOR CONTACT INFO>>

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *MARIO ALVARADO V. RED POINTE ROOFING, L.P.*, Orange County Superior Court Case No. 30-2022-01286100-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MARIO ALVARADO V. RED POINTE ROOFING, L.P., LAWSUIT FILED IN THE ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____

OBJECTION FORM

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

If you wish to object to the settlement, or any portion of it, you may complete, sign and mail this form, postmarked on or before **[RESPONSE DEADLINE]**, addressed as follows:

CPT GROUP, INC. <i>MARIO ALVARADO V. RED POINTE ROOFING, L.P.</i> SETTLEMENT ADMINISTRATOR <<ADMINISTRATOR CONTACT INFO>>
--

Objecting Class Member Information:

_____	_____
Name	Telephone Number

Address

_____	_____
Date	Signature

Last Four Digits of Social Security Number: ____ _

Describe the nature and basis of each objection and please attach additional pages if necessary:

EXHIBIT 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MARIO ALVARADO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California Limited
Partnership,

Defendant.

Case No. 30-2022-01286100-CU-OE-CXC

**NOTICE OF CLASS ACTION AND PAGA
SETTLEMENT**

To: All current and former non-exempt employees of Red Pointe Roofing, L.P. ("Red Pointe") in California who worked at any time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>.

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Red Pointe's records show that you were employed by Red Pointe as a non-exempt employee in California at some time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>> (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the class and representative action lawsuit identified at the top of this page ("Lawsuit"), to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <<ADMIN WEBSITE URL>>.

What is this case about?

Plaintiff Mario Alvarado ("Plaintiff") brought this Lawsuit against Red Pointe, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and Plaintiff's attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleges that Red Pointe: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to authorize and permit all rest periods; (5) failed to reimburse necessary business expenses; (6) failed to issue accurate, itemized wage statements; (7) failed to timely pay all final wages due upon separation of employment; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Private Attorneys General Act ("PAGA").

Red Pointe denies that it has done anything wrong. Red Pointe denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Red Pointe, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Red Pointe's best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Red Pointe provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Red Pointe, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Red Pointe, your decision about whether to participate in the Settlement will not affect your employment. California law and Red Pointe's policy strictly prohibit unlawful retaliation. Red Pointe will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff and Settlement Class Members:

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Ste 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Red Pointe:

CRUSER, MITCHELL, NOVITZ, SANCHEZ, GASTON & ZIMET, LLP

Stacie Turner (SBN 203831)
sturner@cmlawfirm.com
Suhail Rajakumar (SBN 327595)
srajakumar@cmlawfirm.com
800 Wilshire Boulevard, 15th Floor
Los Angeles, California 90017
Tel: (213) 689-8500
Fax: (213) 689-8501

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Red Pointe in California who worked at any time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Red Pointe, as described below in the “Release” section.

Red Pointe agreed to pay \$650,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative’s enhancement payment. Red Pointe will fund the Maximum Settlement Amount within 30 days of the Court granting final approval of the settlement, assuming no objections or appeals, or by September 5, 2024, whichever is later.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved CPT Group, Inc. to function as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Fund (which is currently estimated to be \$216,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through

Settlement finalization. Class Counsel will also ask for reimbursement of up to \$20,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative's Enhancement Payment. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as the Class Representative's enhancement payment. This is meant to compensate Plaintiff for the service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the individuals with PAGA standing (the "PAGA Members") as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) The 25% share of PAGA civil penalties (\$12,500.00) will be distributed to PAGA Members proportionally based on the number of workweeks-pay periods each worked for Red Pointe in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>> (the "PAGA Period").
- (ii) 10% of the Net Settlement Amount will be distributed to Settlement Class Members proportionally based on the number of workweeks each worked for Red Pointe in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>.
- (iii) 10% of the Net Settlement Amount will be distributed in equal shares to Settlement Class Members who separated their employment with Red Pointe on or after October 12, 2019.
- (iv) The remainder of the Net Settlement Amount will be distributed to participating Settlement Class Members based on their proportionate number of workweeks worked between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. The Settlement Administrator will distribute any funds resulting from checks not cashed within the 180 day check cashing deadline to the designated cy pres, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange County.

Allocation and Taxes. Each Individual Settlement Payment will be allocated as 2/3 penalties and interest and 1/3 wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Payments made to PAGA Members will be attributed 100% to penalties and paid via an IRS Form 1099. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Red Pointe, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively "Released Parties") from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Lawsuit (or Plaintiff's letter to the LWDA dated October 13, 2022), or which could have been alleged

based on the factual allegations therein, that arose during the Class Period (collectively the “Released Claims”). The time period covered by this release will mirror the Class Period and will become effective upon the Effective Date (defined below).

PAGA Members, regardless of whether they opt-out of the Settlement, will release and discharge Red Pointe and the Released Parties from all ~~claims, demands, rights, liabilities and causes of action~~ civil penalties owed under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the operative complaint in the Lawsuit (or Plaintiff’s letter to the LWDA dated October 13, 2022), ~~or which could have been alleged based on the factual allegations therein~~, that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release will mirror the PAGA Period and will become effective upon the Effective Date.

Conditions of Settlement and “Effective Date”. The Settlement along with the associated releases are conditioned upon the occurrence of all of the following events: (i) the Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been given to the Settlement Class, providing them with an opportunity to dispute information contained in the Notices of Settlement Payment, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement.

The Settlement will become effective upon the later of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed; and (d) Red Pointe’s deposit of the entire Maximum Settlement Amount to the Settlement Administrator (“Effective Date”)

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and the number of pay periods that you worked during the PAGA Period. The information contained in Red Pointe’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator ~~a written~~ the attached “Request for Exclusion ~~from the Class Action Settlement Form~~” ~~letter or card~~ postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. ~~The Request for Exclusion must state:~~

~~“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE ALVARADO v. RED POINTE LAWSUIT FILED IN THE ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”~~

Send the Request for Exclusion directly to the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Additionally, all Requests for Exclusion will be submitted to the Court. The Settlement Administrator shall make an initial determination regarding the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator, Class Counsel, and Red Pointe's Counsel cannot agree on a resolution, the Class Counsel and Red Pointe's Counsel will submit the dispute to the Court to make a final determination regarding the dispute. Additionally, Class Counsel and Red Pointe's Counsel will file with the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of the disputes, and although the Settlement Administrator may make the initial decision regarding claim disputes, the Court may review any decision made by the Settlement Administrator regarding a claim dispute.

PAGA Members may not opt-out of the release of PAGA claims and will thus receive payment for their share of PAGA civil penalties even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment. PAGA Members will be bound by the release in the above mentioned "PAGA Released Claims," regardless of whether they cash their checks for their share of PAGA civil penalties.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written fill out the attached -"Objection Form" and mail it to the Settlement Administrator. Your written objection should include your name, address, telephone number, last four digits of your social security number, and your signature, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is Alvarado v. Red Pointe Roofing, L.P., Orange County Superior Court, Case No. 30-2022-01286100-CU-OE-CXC. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd. Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing to object to the settlement, whether or not you submit a written objection. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd. Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the enhancement payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

If the Court grants Preliminary Approval of the Settlement, and later Final Approval of the Settlement, the Settlement Administrator will post the following documents on its website: i) the operative complaint; ii) the PAGA notice letter(s) to the LWDA (including Plaintiff's letter to the LWDA dated October 13, 2022); iii) the Settlement

[Agreement and any amendments; iv\) the Notice Packet; v\) the orders granting Preliminary and Final Approval; vi\) and the Final Judgment and Order. The Settlement Administrator will post the above documents for at least 180 days at the following website address: <<ADMINISTRATOR WEBSITE INFO>>.](#)

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may view the online docket for this case using the online search at <https://civilwebshopping.occourts.org/Search.do#searchAnchor> and inputting the case number (01286100) and year filed (2022). You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, RED POINTE, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF SETTLEMENT AWARD

ALVARADO v. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep your current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Red Pointe's records:

- (a) You worked _____ workweeks for Red Pointe as a non-exempt employee in California between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>;
- (b) There were _____ total workweeks worked by non-exempt employees in California between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>;
- (c) You worked _____ ~~workweeks~~ pay periods for Red Pointe as a non-exempt employee in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>;
- (d) There were _____ total ~~workweeks~~ pay periods worked by non-exempt employees in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>; and
- (e) You <<DID/DID NOT>> separate your employment with Red Pointe on or after October 12, 2019.

Based on the above, your Individual Settlement Payment is estimated to be \$ _____ and your PAGA payment is estimated to be \$ _____.

(IV) If you disagree with items (a) - (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Red Pointe's records, those records will control unless you are able to provide documentation that establishes that Red Pointe's records are mistaken. If there is a dispute about whether Red Pointe's information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____ Date: _____

REQUEST FOR EXCLUSION FORM

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

IF YOU *DO NOT* WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [RESPONSE DEADLINE], ADDRESSED AS FOLLOWS:

CPT GROUP, INC.
MARIO ALVARADO V. RED POINTE ROOFING, L.P.
SETTLEMENT ADMINISTRATOR
<<ADMINISTRATOR CONTACT INFO>>

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I *do not* want to be included in the Settlement of the lawsuit entitled MARIO ALVARADO V. RED POINTE ROOFING, L.P., Orange County Superior Court Case No. 30-2022-01286100-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MARIO ALVARADO V. RED POINTE ROOFING, L.P., LAWSUIT FILED IN THE ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name Telephone Number

Address

Date Signature

Last Four Digits of Social Security Number: _____

OBJECTION FORM

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

If you wish to object to the settlement, or any portion of it, you may complete, sign and mail this form, postmarked on or before **RESPONSE DEADLINE**, addressed as follows:

CPT GROUP, INC.
MARIO ALVARADO V. RED POINTE ROOFING, L.P.
SETTLEMENT ADMINISTRATOR
<<ADMINISTRATOR CONTACT INFO>>

Objecting Class Member Information:

Name Telephone Number

Address

Date Signature

Last Four Digits of Social Security Number: _____

Describe the nature and basis of each objection and please attach additional pages if necessary:

EXHIBIT 5

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET LLP**

Stacie L. Turner (SBN 203831)
Katie Coy-Galvin (SBN 314257)
800 Wilshire Boulevard, 15th Floor
Los Angeles, CA 90017
213-689-8500 (phone)
213-689-8501 (fax)

Attorney for Defendant
RED POINTE ROOFING, L.P.

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

MARIO ALVARDO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100;

Defendants.

Case No.: 30-2022-01286100-CU-OE-CXC
Judge: Hon. Melissa R. McCormick
Dept. CX104

**DECLARATION OF DIANA PETERSEN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: October 12, 2022
Trial Date: Not Set

DECLARATION OF DIANA PETERSEN

I, DIANA PETERSEN, declare:

1. I am Director of Administration for Defendant Red Pointe Roofing, LP ("Defendant").

I have personal knowledge of the facts stated in this declaration and, if called as a witness, could
and would testify competently to those facts if called to do so.

2. Defendant has made a reasonable inquiry and is not aware of any class,
representative or any other collective action in any court that asserts claims similar to those
asserted in the within action.

3. Defendant has no interest in the cy pres recipient including its governance.

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

Executed on October 11, 2024 at Orange, California.



Diana Petersen
Declarant

EXHIBIT 6

**CRUSER, MITCHELL, NOVITZ,
SANCHEZ, GASTON & ZIMET LLP**

Stacie L. Turner (SBN 203831)
Katie Coy-Galvin (SBN 314257)
800 Wilshire Boulevard, 15th Floor
Los Angeles, CA 90017
213-689-8500 (phone)
213-689-8501 (fax)

Attorney for Defendant
RED POINTE ROOFING, L.P.

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

MARIO ALVARDO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100;

Defendants.

Case No.: 30-2022-01286100-CU-OE-CXC
Judge: Hon. Melissa R. McCormick
Dept. CX104

**DECLARATION OF STACIE L. TURNER IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Complaint Filed: October 12, 2022
Trial Date: Not Set

DECLARATION OF STACIE L. TURNER

I, STACIE L. TURNER, declare:

1. I am an attorney licensed to practice before all Courts of the State of California and a partner at Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet, LLP, counsel of record for Defendant, RED POINTE ROOFING, L.P. ("Defendant").

2. As counsel for Defendant I have no interest in the cy pres recipient, including its governance.

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

Executed on October 10, 2024 at Los Angeles, California.



Stacie L. Turner
Declarant

EXHIBIT 7

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MARIO ALVARADO, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01286100-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Melissa R. McCormick, Dept. CX104]*

**DECLARATION OF MARIO
ALVARADO IN SUPPORT OF
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date:
Time:
Dept.: CX104

Action Filed: October 12, 2022
Trial Date: None Set

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I, Mario Alvarado, declare as follows:

1. I am an individual over the age of 18 and am the named Plaintiff in this matter.

This declaration is submitted in support of approval of the proposed class action settlement (“Settlement”) reached in this case. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I worked for Red Pointe Roofing, L.P. (“Red Pointe”) in California from approximately October 4, 2021, to July 31, 2022. During my employment, Red Pointe paid me based on my scheduled hours, not the actual hours I worked. Specifically, I had to arrive at the worksite at least 30 minutes before my scheduled shift time so that I could prep my tools, put on my protective equipment, organize my work area, and perform a safety check. Once all of those tasks are completed, I would be ready to begin work at my scheduled shift time. I was not allowed to include this pre-shift time on my timesheets. I do not believe I was paid for all the time I spent performing my work duties. Additionally, I was not paid correctly for all of my time when I worked over 12 hours in a day.

3. I generally started work around 6:30 am each day. I would regularly not be able to take my lunch break until around 12:00pm. I was also interrupted during my lunch break and told to return to work. I also was not allowed to take any 10-minute rest periods during my workday.

4. I was required to use my personal cell phone to speak with my supervisors and discuss project changes and directions to job sites. Red Pointe did not pay me any money for using my personal cell phone. I also was required to purchase tools like soldering guns, helmets, and ladders which Red Pointe did not reimburse me for.

5. I started this lawsuit against Red Pointe because I wanted Red Pointe to comply with the law and treat its employees fairly. I feel that I have taken on a greater burden than any of the other Red Pointe employees because it is my name that is attached to the lawsuit. Even though I understood that this lawsuit would be a public record, I accepted that burden for the benefit of Red Pointe's other workers.

6. I have been actively involved in this case since before it was filed. Some of the tasks I have performed include, gathering relevant documents for use in the lawsuit, providing factual information regarding the claims and Red Pointe's practices to my attorneys, and helping identify other employees who also experienced the same issues that I did. I also made myself available to my attorneys for the entire day of mediation. I estimate that I have spent at least 15 to 20 total hours on activities leading to the resolution of this matter.

7. I confirm that I am not affiliated with the proposed settlement administrator, CPT Group, Inc. Also, I have no interest in the proposed cy pres recipient, Community Legal Aid SoCal, nor am I involved whatsoever in its governance.

I declare under penalty of perjury under the laws of the state of California and the United States that the foregoing is true and correct. Executed on 10/10/24, in Dallas, Texas.

Mario Alvarado (Oct 10, 2024 13:11 CDT)

Mario Alvarado

EXHIBIT 8

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

16 MARIO ALVARADO, an individual and on
17 behalf of all others similarly situated,

18 Plaintiff,

19 vs.
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21 RED POINTE ROOFING, L.P., a California
22 Limited Partnership; and DOES 1 through
23 100,

24 Defendants.

CASE NO. 30-2022-01286100-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Melissa R. McCormick, Dept. CX104]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: October 24, 2024

Time: 2:00 p.m.

Dept.: CX104

Action Filed: October 12, 2022

Trial Date: None Set

1 The Motion of Plaintiff Mario Alvarado (“Plaintiff”) for Preliminary Approval of Class
2 Action and PAGA Settlement came regularly for hearing before this Court on October 24, 2024,
3 at 2:00 p.m. The Court, having considered the proposed Stipulation of Settlement (the
4 “Settlement”), attached hereto as Exhibit A; having considered The Notice of Class Action and
5 PAGA Settlement, Request For Exclusion Form, and Objection Form (collectively, “Notice
6 Packet”) attached hereto as Exhibit B; having considered Plaintiff’s Supplemental Brief in
7 Support of Motion for Preliminary Approval of Class Action Settlement; having considered
8 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, Memorandum of Points
9 and Authorities in support thereof, and supporting declarations filed therewith; and good cause
10 appearing, HEREBY ORDERS THE FOLLOWING:

11 1. The Court finds that the settlement is fair, adequate and reasonable, and in the best
12 interests of the Settlement Class members. The Court hereby GRANTS preliminary approval of
13 the class action settlement as set forth in the Settlement and finds its terms to be within the range
14 of reasonableness of a settlement that ultimately could be granted approval by the Court at a Final
15 Fairness Hearing. For purposes of the Settlement, the Court finds that the proposed Settlement
16 Class is ascertainable and that there is a sufficiently well-defined community of interest among
17 the members of the Settlement Class in questions of law and fact. Therefore, for settlement
18 purposes only, the Court grants conditional certification of the following Settlement Class:

19 All current and former non-exempt employees of Defendant Red
20 Pointe Roofing, L.P. in California who worked at any time between
21 October 12, 2018, and the date of preliminary approval (the “Class
22 Period”).

23 2. For purposes of the Settlement, the Court preliminarily designates Plaintiff Mario
24 Alvarado as Class Representative and preliminarily designates Fletcher W. Schmidt, Paul K.
25 Haines, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel.

26 3. Defendant will pay a non-reversionary Maximum Settlement Amount of
27 \$650,000.00. The Net Settlement Amount is the amount remaining from the Maximum Settlement
28 Amount after deducting the not-to-exceed requested amounts for attorneys’ fees (\$216,666.67)
and verified costs reimbursement (\$20,000.00), the Class Representative Enhancement Payment

1 (\$7,500.00), settlement administration costs (\$10,000.00), and the California Labor & Workforce
2 Development Agency's ("LWDA") share of civil penalties under the Private Attorneys General
3 Act ("PAGA"), which is 75% of the total amount of PAGA civil penalties (\$37,500.00). Based
4 on these requested amounts, the Net Settlement Amount is calculated to be approximately
5 \$358,333.33. From the Net Settlement Amount, the PAGA Members will receive the remaining
6 25% (\$12,500.00), designated a PAGA civil penalties. The total amount allocated for PAGA civil
7 penalties was therefore \$50,000.00.

8 4. The Court preliminarily designates CPT Group, Inc. as the third-party Settlement
9 Administrator for mailing notices.

10 5. The Court approves, as to form and content, Notice Packet, attached hereto as
11 Exhibit B and submitted concurrently as Exhibit 3 to the Declaration of Andrew J. Rowbotham
12 in Support of Plaintiff's Supplemental Brief in Support of Motion for Preliminary Approval of
13 Class Action and PAGA Settlement.

14 6. The Court finds that the form of notice to the Settlement Class regarding the
15 pendency of the action and of the Settlement, and the methods of giving notice to members of the
16 Settlement Class constitute the best notice practicable under the circumstances, and constitute
17 valid, due, and sufficient notice to all members of the Settlement Class. The form and method of
18 giving notice complies fully with the requirements of California Code of Civil Procedure § 382,
19 California Civil Code § 1781, California Rules of Court 3.766 and 3.769, the California and
20 United States Constitutions, and other applicable law.

21 7. The Court further approves the procedures for Settlement Class members to opt
22 out of or object to the Settlement, as set forth in the Class Notice.

23 8. The procedures and requirements for filing objections in connection with the Final
24 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
25 presentation of any Settlement Class member's objection to the Settlement, in accordance with
26 the due process rights of all Settlement Class members.

1 9. The Court directs the Settlement Administrator to mail the Notice Packet to the
2 members of the Settlement Class in accordance with the terms of the Settlement. The Court directs
3 the Settlement Administrator to carry out all duties as required by the Settlement.

4 10. The Notice Packet shall provide at least 60 calendar days' notice for members of
5 the Settlement Class to opt out of, or object to the Settlement. Any Request for Exclusion,
6 Objection or Dispute shall be submitted directly to the Settlement Administrator and filed with
7 the Court. Upon receipt of any Requests for Exclusion or Objections, the Settlement
8 Administrator shall forward copies of all Requests for Exclusion and Objections to counsel for
9 all parties. The Settlement Administrator shall file a declaration concurrently with the filing of
10 the Motion for Final Approval of Class Action Settlement which authenticates a copy of every
11 Request for Exclusion and Objection received by the Settlement Administrator. The Settlement
12 Administrator shall give notice to any objecting Settlement Class member of any continuance of
13 the hearing on Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

14 11. The Final Fairness Hearing on the question of whether the Settlement should be
15 finally approved as fair, reasonable, and adequate is scheduled in Department CX104 of this
16 Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701 on March 6, 2025, at 2:00
17 p.m. or _____, at _____ a.m./p.m.

18 12. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement
19 should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether
20 a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's
21 application for reasonable attorneys' fees, reimbursement of litigation expenses, enhancement
22 payment to Plaintiff, settlement administration costs, and payment to the LWDA for penalties
23 under the PAGA should be granted.

24 13. Counsel for the parties shall file memoranda, declarations, or other statements and
25 materials in support of their request for final approval of the Settlement, attorneys' fees, litigation
26 expenses, Plaintiff's enhancement payment, settlement administration costs, and payment to the
27 LWDA for PAGA penalties prior to the Final Fairness Hearing according to the time limits set
28 by the Code of Civil Procedure and the California Rules of Court.

14. An implementation schedule is below (assuming the Court signs this Order on October 24, 2024):

Event	Date
Defendant to provide Settlement Class member information to the Settlement Administrator no later than [10 business days after preliminary approval]:	November 7, 2024
Settlement Administrator to mail Notice Packet to Settlement Class members no later than [10 business days from receipt of Settlement Class members' information]:	November 22, 2024
Deadline for Settlement Class members to request exclusion from, submit dispute, or object to the Settlement [60 calendar days from mailing of Notice Packet]:	January 21, 2025
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	At least 16 court days before Final Fairness Hearing
Final Fairness Hearing:	☐ March 6, 2025, at 2:00 p.m. ☐ _____, 2025 at _____ a.m. / p.m.

15. The procedures and schedule for Settlement Class members to submit Requests for Exclusions, Objections, and Disputes will be as follows:

i. Requests for Exclusions

- a. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail the Request for Exclusion Form (found in the Notice Packet, attached hereto to Exhibit B) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline"), which will be January 21, 2025.
- b. Any Settlement Class member who completes a Request for Exclusion Form must include their name, address, telephone number, last four digits of your social security number, and signature. The Request for Exclusion Form must be postmarked by the January 21, 2025, Response Deadline. If the Request for Exclusion Form does not contain the Settlement Class member's name, address, telephone number, last four digits of your social security number, and signature,

and is not postmarked by the January 21, 2025, Response Deadline, it will not be deemed valid for exclusion from the Settlement.

- c. PAGA Members may not opt-out of the release of PAGA claims and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment.

ii. Objections

- a. Any Settlement Class member who wishes to Object to the Settlement must complete and mail the Objection Form (found in the Notice Packet, attached hereto to Exhibit B) to the Settlement Administrator on or before the January 21, 2025 Response Deadline.
- b. Any Settlement Class member who completes an Objection Form must include his/her name, address, last four digits of his/her social security number, and signature. The Objection Form must be postmarked by the January 21, 2025, Response Deadline.
- c. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an Objection at the Final Approval Hearing. Settlement Class members need not submit written Objections to be heard by the Court at the Final Approval Hearing. Settlement Class members need not submit written Objections to be heard by the Court at the Final Approval Hearing. If the Court rejects a Settlement Class member's Objection, the Settlement Class member will still be bound by the terms of the Settlement.

iii. Disputes

- a. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice

1 of Settlement Payment, to provide documentation and/or an explanation to show
2 contrary information. Any such dispute, including any supporting documentation,
3 must be mailed to the Settlement Administrator and postmarked by the January
4 21, 2025, Response Deadline.

5 b. The “Notice of Settlement Award” Form (found in the Notice Packet, attached
6 hereto to Exhibit B) contains a section for Settlement Class members to offer
7 written explanations of any disputes and return to the Settlement Administrator for
8 review.

9 c. The Settlement Administrator shall make an initial determination regarding the
10 eligibility for, and the amounts of, any Individual Settlement Payment under the
11 terms of this Settlement Agreement. However, if the Settlement Administrator and
12 the Parties cannot agree on a resolution, the Parties will request the Court make a
13 final determination regarding the dispute. Additionally, the Parties will file with
14 the Court all disputes submitted by Settlement Class Members, the evidence
15 submitted, and the resolution of the disputes, and although the Settlement
16 Administrator may make the initial decision regarding claim disputes, the Court
17 may review any decision made by the Settlement Administrator regarding a claim
18 dispute.

19 16. Pending the Final Fairness Hearing, all proceedings in this action, other than
20 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
21 Order, are stayed.

22 17. Counsel for the parties are hereby authorized to utilize all reasonable procedures
23 in connection with the administration of the Settlement which are not materially inconsistent with
24 either this Order or the terms of the Settlement.

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1 18. The Court will retain jurisdiction to enforce the Settlement pursuant to the
2 California Code of Civil Procedure § 664.6.

3 **IT IS SO ORDERED.**

4
5 Dated: _____, 2024

6 Honorable Melissa R. McCormick
7 Judge of the Superior Court
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STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Mario Alvarado (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), and Defendant Red Pointe Roofing, L.P. (“Defendant”). Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Stacie L. Turner and Suhail Rajakumar of Cruser, Mitchell, Novitz, Sanchez, Gaston, & Zimet, LLP.

On October 12, 2022, Plaintiff filed a class action complaint against Defendant in Orange County Superior Court titled *Mario Alvarado v. Red Pointe Roofing, L.P.*, Case No. 30-2022-01286100-CU-OE-CXC (the “Action”). The Action alleges that Defendant: (1) failed to pay all minimum wages (Labor Code §§ 1182.12, 1194, 1194.2, 1197); (2) failed to pay all overtime wages (Labor Code §§ 204, 510, 558, 1194, 1198); (3) failed to provide all meal periods (Labor Code §§ 226.7, 512, 558); (4) failed to authorize and permit all rest periods (Labor Code §§ 226.7, 516, 558); (5) failed to reimburse necessary business expenses (Labor Code § 2802, 2804); (6) failed to issue accurate, itemized wage statements (Labor Code § 226 *et seq.*); (7) failed to timely pay all final wages due upon separation of employment (Labor Code §§ 201-203); and (8) engaged in unfair competition (Business and Professions Code § 17200). The following day, on October 13, 2022, Plaintiff notified Defendant and the California Labor & Workforce Development Agency (“LWDA”) of his intent to seek civil penalties under the Private Attorneys General Act (Labor Code § 2698 *et seq.*) (“PAGA”) based on the above alleged Labor Code violations. On December 19, 2022, after Plaintiff exhausted his administrative remedies with the LWDA, Plaintiff amended the complaint to add a cause of action for civil penalties under the PAGA.

Given the uncertainty of litigation, and without Defendant making any admission as to the merits of any of the claims asserted, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendant in California who worked at any time between October 12, 2018, and the date of preliminary approval (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Code of Civil Procedure § 382. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Members.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate that the PAGA Members shall be defined as:

All current and former non-exempt employees of Defendant in California who worked at any time between October 12, 2021, and the date of preliminary approval (the “PAGA Period”).

3. **Release by Settlement Class Members, PAGA Members, and Plaintiff.** Plaintiff and every member of the Settlement Class (except those who opt out of the Settlement) will release and discharge Defendant, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively “Defendant’s Releasees”) as follows:

- A. All members of the Settlement Class who do not opt-out will release and discharge Defendant and Defendant’s Releasees from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Action, or which could have been alleged based on the factual allegations therein, that arose during the Class Period (collectively the “Released Claims”). The time period covered by this release will mirror the Class Period and will become effective upon the Effective Date.
- B. PAGA Members, regardless of whether they opt-out of the Settlement, will release and discharge Defendant and Defendant’s Releasees from all civil penalties owed under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the operative complaint in the Action (or Plaintiff’s letter to the LWDA dated October 13, 2022) that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release will mirror the PAGA Period and will become effective upon the Effective Date.
- C. Plaintiff agrees to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, 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.

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers’ compensation laws). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or National Labor Relations Board,

or participation in an administrative investigation or proceeding. The waiver and release in this Settlement Agreement does not apply to rights or claims arising out of this Settlement Agreement after this Settlement Agreement is executed by Plaintiff and rights or claims arising of this Settlement Agreement.

- D. The “Effective Date” of this Settlement is the later of: (a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed; and (d) Defendant’s deposit of the entire Maximum Settlement Amount to the mutually selected third party administrator.

4. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a “Maximum Settlement Amount” of \$650,000.00 in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage CPT Group, Inc. as the “Settlement Administrator to administer this Settlement.
- B. The Maximum Settlement Amount and the employer’s side of payroll taxes on the portion allocated as wages shall be paid by Defendant within 30 days after the Court grants final approval of the settlement, assuming no objections or appeals, or by September 5, 2024, whichever is later.
- C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Settlement Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$10,000.00;
 - (3) Up to \$7,500.00 for Plaintiff’s Class Representative Enhancement Payment in recognition for Plaintiff’s contributions to the Action and Plaintiff’s service to the Settlement Class;
 - (4) Up to one-third (33.33%) of the Maximum Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$216,666.67), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$20,000.00; and
 - (5) \$50,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties (\$37,500.00), will be payable to the LWDA and the remaining 25% (\$12,500.00), will be payable to the PAGA Members as described below.

- D. Defendant will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Settlement Class members who do not opt-out.
 - E. **Escalator Clause.** Defendant represents that there are an estimated 23,000 workweeks worked by the Settlement Class members during the Class Period. If the number of workweeks worked during the Class Period is more than 10% greater than this figure (i.e., if there are 25,300 or more workweeks worked during the Class Period), Defendant agrees to increase the Maximum Settlement Amount on a proportional basis above 10% (i.e., if there was 11% increase in the number workweeks worked, Defendant would increase the Maximum Settlement Amount by 1%).
 - F. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer's share of payroll taxes on any amounts designated as wages, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.
5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
 - B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula:
 - i. PAGA Amount: The \$12,500.00 payable to PAGA Members as PAGA civil penalties shall be designated as the "PAGA Amount." Each individual who was employed by Defendant at any time between October 12, 2021 and the date of preliminary approval, shall receive a portion of the PAGA Amount based on the number of pay periods that he or she worked during the aforementioned time period compared to the total number of pay periods worked by all PAGA Members during the aforementioned time period.
 - ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time between October 12, 2021 and the date of preliminary approval, shall receive a portion of the Wage Statement Amount based on the number of workweeks that he or she worked during the aforementioned time period

compared to the total number of workweeks worked by all participating Settlement Class members during the aforementioned time period.

- iii. Waiting Time Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the “Waiting Time Amount.” The Waiting Time Amount shall be distributed in equal shares to all participating Settlement Class members who separated their employment with Defendant on or after October 12, 2019.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on the number of workweeks that he or she worked during the aforementioned time period compared to the total number of workweeks worked by all participating Settlement Class members during the aforementioned time period.
- C. Within 10 business days following the funding of the Maximum Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment, and will prepare and mail Individual Settlement Payments to Settlement Class Members. The Settlement Administrator will also mail any amounts awarded to Plaintiff for the Class Representative Enhancement Payment as well as the amounts awarded to Class Counsel for attorneys’ fees and costs by the same deadline.
- D. Each Individual Settlement Payment shall be allocated as 1/3 wages and 2/3 penalties and interest. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as penalties and interest). Payments made to PAGA Members will be attributed 100% to penalties and paid via an IRS Form 1099. Settlement Class Members will be responsible for all employee-side taxes due on Individual Settlement Payments.
- E. Defendant shall fully discharge its obligations to those Settlement Class members to whom an Individual Settlement Payment is made, regardless of whether such checks are actually received and/or negotiated by Settlement Class members. Any check that is not negotiated within 180 days of mailing to a Settlement Class member shall be distributed by the Settlement Administrator to the *cy pres*, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange County.
- F. Neither Plaintiff nor Defendant shall bear any liability for lost, stolen, undelivered or misdelivered checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.
5. **Attorneys’ Fees and Costs.** Defendant will not object to Class Counsel’s request for a total award of attorneys’ fees of up to one-third of the Maximum Settlement Amount, which is currently estimated to be \$216,666.67. Additionally, Class Counsel will request an award of actual

costs and expenses as supported by declaration, in an amount not to exceed \$20,000.00 from the Maximum Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed, and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for Class Representative Enhancement Payment of \$7,500.00 for Plaintiff's time and risk in prosecuting this case and Plaintiff's service to the Settlement Class. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class Member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant will not object to the appointment of CPT Group, Inc. as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$10,000.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for sending notices to the Settlement Class members, for calculating Individual Settlement Payments, and for preparing all checks and mailings. The Settlement Administrator shall be authorized to pay itself from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Fletcher W. Schmidt, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Mario Alvarado as Class Representative for the Settlement Class;
- D. Approving CPT Group, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Payment), and which counsel for all Parties shall mutually agree upon before submitting to the Court, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within 10 business days of the Court signing an order preliminarily approving this Settlement, Defendant will provide the Settlement Administrator with the names, addresses, phone numbers, social security numbers, positions held, dates of employment, and relevant workweek information for each Settlement Class member during the Class Period and each PAGA Member during the PAGA Period.
- B. Within 10 business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within 5 business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional 14 calendar days after the Response Deadline to opt-out, object, or dispute their Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement,

except a Request for Exclusion not containing a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- ii. PAGA Members may not opt-out of the release of PAGA claims (as described in Paragraph 3.B.) and will thus receive payment for their share of the PAGA Amount even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment.
 - iii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class or encourage any Settlement Class member to appeal from the final judgment.
 - iv. All Request for Exclusions shall be submitted to the Court at the time Plaintiff submits the Motion for Final Approval.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court) within the Response Deadline. Any such written objections must contain the Settlement Class Member's name, address, and last four digits of his or her social security number. The objection must also be signed by the Settlement Class member. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing. Settlement Class Members need not submit written objections to be heard by the Court at the Final Approval Hearing.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an

adjustment is warranted. The Settlement Administrator shall make an initial determination regarding the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will request the Court make a final determination regarding the dispute. Additionally, the Parties will file with the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of the disputes, and although the Settlement Administrator may make the initial decision regarding claim disputes, the Court may review any decision made by the Settlement Administrator regarding a claim dispute.

- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If the Effective Date does not occur or Defendant fails to fully fund the Settlement pursuant to Paragraph 4.B. above, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Confidentiality.** The Parties and their counsel will keep the Settlement, the Settlement-related documents, and their Settlement negotiations confidential, and will not disclose that information to any third party through the date of preliminary approval. Thereafter, the Parties agree to make no comments to the media or otherwise publicize the terms of the Settlement.

14. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff:	Fletcher W. Schmidt of Haines Law Group, APC 2155 Campus Drive, Suite 180, El Segundo, CA 90265 fschmidt@haineslawgroup.com
if to Defendant:	Stacie Turner of Cruiser, Mitchell, Novitz, Sanchez, Gaston, & Zimet, LLP 800 Wilshire Boulevard, 15th Floor, Los Angeles, California 90017 sturner@cmlawfirm.com

15. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

16. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

17. **Enforcement Action.** In the event that one more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

18. **Continuing Jurisdiction.** The Parties stipulate that, pursuant to California Code of Civil Procedure § 664.6, the Orange County Superior Court will retain jurisdiction over the Parties to enforce this Settlement Agreement until full performance of the terms of the settlement has been completed.

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[SIGNATURES BEGIN ON FOLLOWING PAGE]

DATED: Oct 10, 2024

RED POINTE ROOFING, L.P.

By: 
Name: Aaron Martin
Title: President

DATED:

PLAINTIFF MARIO ALVARADO

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: October 10, 2024

CRUSER, MITCHELL, NOVITZ, SANCHEZ,
GASTON, & ZIMET, LLP

By: 
Stacie Turner
Attorneys for Defendant

DATED:

HAINES LAW GROUP, APC

By: _____
Fletcher W. Schmidt
Attorneys for Plaintiff

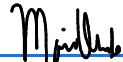
DATED:

RED POINTE ROOFING, L.P.

By: _____
Name: _____
Title: _____

DATED: 10/10/24

PLAINTIFF MARIO ALVARADO

By:  _____
Mario Alvarado (Oct 10, 2024 13:11 CDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

CRUSER, MITCHELL, NOVITZ, SANCHEZ,
GASTON, & ZIMET, LLP

By: _____
Stacie Turner
Attorneys for Defendant

DATED: 10/10/24

HAINES LAW GROUP, APC

By:  _____
Fletcher W. Schmidt
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

MARIO ALVARADO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California Limited
Partnership,

Defendant.

Case No. 30-2022-01286100-CU-OE-CXC

**NOTICE OF CLASS ACTION AND PAGA
SETTLEMENT**

To: All current and former non-exempt employees of Red Pointe Roofing, L.P. ("Red Pointe") in California who worked at any time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>.

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING PROVIDED TO YOU IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

You may be entitled to money from this Settlement. Red Pointe's records show that you were employed by Red Pointe as a non-exempt employee in California at some time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>> (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the class and representative action lawsuit identified at the top of this page ("Lawsuit"), to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. Notice of the final judgment will be posted online at <<ADMIN WEBSITE URL>>.

What is this case about?

Plaintiff Mario Alvarado ("Plaintiff") brought this Lawsuit against Red Pointe, asserting claims on behalf of all Settlement Class Members. Plaintiff is known as the "Class Representative," and Plaintiff's attorneys, who also represent the interests of all Settlement Class Members, are known as "Class Counsel."

In the Lawsuit, Plaintiff alleges that Red Pointe: (1) failed to pay all minimum wages; (2) failed to pay all overtime wages; (3) failed to provide all meal periods; (4) failed to authorize and permit all rest periods; (5) failed to reimburse necessary business expenses; (6) failed to issue accurate, itemized wage statements; (7) failed to timely pay all final wages due upon separation of employment; (8) engaged in unfair competition; and (9) is liable for civil penalties under the Private Attorneys General Act ("PAGA").

Red Pointe denies that it has done anything wrong. Red Pointe denies that it owes Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Red Pointe, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in Red Pointe's best interests and the interests of Settlement Class Members to settle the Lawsuit on the terms summarized in this Notice. After Red Pointe provided relevant information to Class Counsel, the Settlement was reached after mediation and negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Red Pointe, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Red Pointe, your decision about whether to participate in the Settlement will not affect your employment. California law and Red Pointe's policy strictly prohibit unlawful retaliation. Red Pointe will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff and Settlement Class Members:

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Ste 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Red Pointe:

CRUSER, MITCHELL, NOVITZ, SANCHEZ, GASTON & ZIMET, LLP

Stacie Turner (SBN 203831)
sturner@cmlawfirm.com
Suhail Rajakumar (SBN 327595)
srajakumar@cmlawfirm.com
800 Wilshire Boulevard, 15th Floor
Los Angeles, California 90017
Tel: (213) 689-8500
Fax: (213) 689-8501

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class – for settlement purposes only – of all current and former non-exempt employees of Red Pointe in California who worked at any time between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Red Pointe, as described below in the “Release” section.

Red Pointe agreed to pay \$650,000.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative’s enhancement payment. Red Pointe will fund the Maximum Settlement Amount within 30 days of the Court granting final approval of the settlement, assuming no objections or appeals, or by September 5, 2024, whichever is later.

The following deductions from the Maximum Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved CPT Group, Inc. to function as the “Settlement Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Maximum Settlement Amount to pay the settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Maximum Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Maximum Settlement Fund (which is currently estimated to be \$216,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through

Settlement finalization. Class Counsel will also ask for reimbursement of up to \$20,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative's Enhancement Payment. Class Counsel will ask the Court to award \$7,500.00 to Plaintiff as the Class Representative's enhancement payment. This is meant to compensate Plaintiff for the service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$50,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties (\$37,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$12,500.00) will be payable to the individuals with PAGA standing (the "PAGA Members") as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) The 25% share of PAGA civil penalties (\$12,500.00) will be distributed to PAGA Members proportionally based on the number of pay periods each worked for Red Pointe in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>> (the "PAGA Period").
- (ii) 10% of the Net Settlement Amount will be distributed to Settlement Class Members proportionally based on the number of workweeks each worked for Red Pointe in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>.
- (iii) 10% of the Net Settlement Amount will be distributed in equal shares to Settlement Class Members who separated their employment with Red Pointe on or after October 12, 2019.
- (iv) The remainder of the Net Settlement Amount will be distributed to participating Settlement Class Members based on their proportionate number of workweeks worked between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class Members during the Class Period.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. The Settlement Administrator will distribute any funds resulting from checks not cashed within the 180 day check cashing deadline to the designated cy pres, Community Legal Aid SoCal, a 501(c)(3) organization dedicated to providing legal services to the indigent population of Orange County.

Allocation and Taxes. Each Individual Settlement Payment will be allocated as 2/3 penalties and interest and 1/3 wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form 1099 (for amounts paid as penalties and interest) and IRS Form W2 (for amounts paid as wages). Payments made to PAGA Members will be attributed 100% to penalties and paid via an IRS Form 1099. The Settlement Administrator will be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully release and discharge Red Pointe, its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively "Released Parties") from all claims, demands, rights, liabilities and causes of action that were pled in the operative complaint in the Lawsuit, or which could have been alleged based on the factual allegations therein, that arose during

the Class Period (collectively the “Released Claims”). The time period covered by this release will mirror the Class Period and will become effective upon the Effective Date (defined below).

PAGA Members, regardless of whether they opt-out of the Settlement, will release and discharge Red Pointe and the Released Parties from all civil penalties owed under the PAGA, premised on the facts, claims, causes of action or legal theories pled in the operative complaint in the Lawsuit (or Plaintiff’s letter to the LWDA dated October 13, 2022), that arose during the PAGA Period (collectively the “PAGA Released Claims”). The time period covered by this release will mirror the PAGA Period and will become effective upon the Effective Date.

Conditions of Settlement and “Effective Date”. The Settlement along with the associated releases are conditioned upon the occurrence of all of the following events: (i) the Settlement has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary approval to the Settlement; (iii) the notice has been given to the Settlement Class, providing them with an opportunity to dispute information contained in the Notices of Settlement Payment, to opt out of the Settlement, or to object to the Settlement; (iv) the Court has held a final approval hearing and entered a final order and judgment certifying the Settlement Class and approving this Settlement.

The Settlement will become effective upon the later of: (a) the Court’s final approval of the settlement if no objections by or on behalf of Settlement Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed; and (d) Red Pointe’s deposit of the entire Maximum Settlement Amount to the Settlement Administrator (“Effective Date”)

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment, which has been calculated for you based on the formula set forth above, as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the Class Period and the number of pay periods that you worked during the PAGA Period. The information contained in Red Pointe’s records regarding this information, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator the attached “Request for Exclusion Form” postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Additionally, all Requests for Exclusion will be submitted to the Court. The Settlement Administrator shall make an initial determination regarding the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement. However, if the Settlement Administrator, Class Counsel, and Red Pointe's Counsel cannot agree on a resolution, the Class Counsel and Red Pointe's Counsel will submit the dispute to the Court to make a final determination regarding the dispute. Additionally, Class Counsel and Red Pointe's Counsel will file with the Court all disputes submitted by Settlement Class Members, the evidence submitted, and the resolution of the disputes, and although the Settlement Administrator may make the initial decision regarding claim disputes, the Court may review any decision made by the Settlement Administrator regarding a claim dispute.

PAGA Members may not opt-out of the release of PAGA claims and will thus receive payment for their share of PAGA civil penalties even if they request exclusion from the Settlement and do not receive a class portion of their Individual Settlement Payment. PAGA Members will be bound by the release in the above mentioned "PAGA Released Claims," regardless of whether they cash their checks for their share of PAGA civil penalties.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may fill out the attached "Objection Form" and mail it to the Settlement Administrator with your name, address, telephone number, last four digits of your social security number, and your signature. Objections in writing must be postmarked on or before <<RESPONSE DEADLINE>>.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd. Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing to object to the settlement, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department CX104 of the Orange County Superior Court, located at 751 West Santa Ana Blvd. Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the enhancement payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing.**

If the Court grants Preliminary Approval of the Settlement, and later Final Approval of the Settlement, the Settlement Administrator will post the following documents on its website: i) the operative complaint; ii) the PAGA notice letter(s) to the LWDA (including Plaintiff's letter to the LWDA dated October 13, 2022); iii) the Settlement Agreement and any amendments; iv) the Notice Packet; v) the orders granting Preliminary and Final Approval; vi) and the Final Judgment and Order. The Settlement Administrator will post the above documents for at least 180 days at the following website address: <<ADMINISTRATOR WEBSITE INFO>>.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may view the online docket for this case using the online search at <https://civilwebshopping.occourts.org/Search.do#searchAnchor> and inputting the case number (01286100) and year filed (2022). You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, RED POINTE, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<**RESPONSE DEADLINE**>>.

NOTICE OF SETTLEMENT AWARD

ALVARADO v. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep your current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City State Zip Code

(III) Information Used to Calculate Your Individual Settlement Payment:

According to Red Pointe's records:

- (a) You worked _____ workweeks for Red Pointe as a non-exempt employee in California between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>;
- (b) There were _____ total workweeks worked by non-exempt employees in California between October 12, 2018, and <<PRELIMINARY APPROVAL DATE>>;
- (c) You worked _____ pay periods for Red Pointe as a non-exempt employee in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>;
- (d) There were _____ total pay periods worked by non-exempt employees in California between October 12, 2021 and <<PRELIMINARY APPROVAL DATE>>; and
- (e) You <<DID/DID NOT>> separate your employment with Red Pointe on or after October 12, 2019.

Based on the above, your Individual Settlement Payment is estimated to be \$ _____ and your PAGA payment is estimated to be \$ _____.

(IV) If you disagree with items (a) - (e) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Red Pointe's records, those records will control unless you are able to provide documentation that establishes that Red Pointe's records are mistaken. If there is a dispute about whether Red Pointe's information or yours is accurate, and the dispute cannot be resolved informally, the Parties and the Settlement Administrator will resolve the dispute as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____ Date: _____

REQUEST FOR EXCLUSION FORM

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [RESPONSE DEADLINE], ADDRESSED AS FOLLOWS:

CPT GROUP, INC.
MARIO ALVARADO V. RED POINTE ROOFING, L.P.
SETTLEMENT ADMINISTRATOR
<<ADMINISTRATOR CONTACT INFO>>

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE A PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I **do not** want to be included in the Settlement of the lawsuit entitled *MARIO ALVARADO V. RED POINTE ROOFING, L.P.*, Orange County Superior Court Case No. 30-2022-01286100-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE MARIO ALVARADO V. RED POINTE ROOFING, L.P., LAWSUIT FILED IN THE ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ ____ ____ ____

OBJECTION FORM

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01286100-CU-OE-CXC

If you wish to object to the settlement, or any portion of it, you may complete, sign and mail this form, postmarked on or before **[RESPONSE DEADLINE]**, addressed as follows:

CPT GROUP, INC. <i>MARIO ALVARADO V. RED POINTE ROOFING, L.P.</i> SETTLEMENT ADMINISTRATOR <<ADMINISTRATOR CONTACT INFO>>
--

Objecting Class Member Information:

_____	_____
Name	Telephone Number

Address

_____	_____
Date	Signature

Last Four Digits of Social Security Number: ____ _

Describe the nature and basis of each objection and please attach additional pages if necessary:



I certify that, to the best of my knowledge, these are complete and accurate translations of the English documents into Spanish:

Red Pointe Class Notice
Red Pointe Notice of Settlement Award
Red Pointe Exclusion Form
Red Pointe Objection Form

I, Laura Garcia, do hereby swear and affirm that I have truly and accurately translated the document from the English language into Spanish and that it is a true and accurate translation of the document, and further that I am competent to translate in both languages.

A handwritten signature in black ink, appearing to read "Laura Garcia", written over a horizontal line.

Laura Garcia
Certified Spanish Translator
CPT Group, Inc.

Dated October 11, 2024

CORTE SUPERIOR DEL ESTADO DE CALIFORNIA
CONDADO DE ORANGE

MARIO ALVARADO, como un individuo y en
nombre de todos los demás en una situación similar,

Demandante,

vs.

RED POINTE ROOFING, L.P., una Sociedad
Limitada de California,

Demandado.

Caso No. 30-2022-01286100-CU-OE-CXC

**AVISO DEL ACUERDO DE LA DEMANDA
COLECTIVA Y DE PAGA**

Para: Todos los empleados actuales y anteriores no exentos de Red Pointe Roofing, L.P. ("Red Pointe") en California que trabajaron en cualquier momento entre el 12 de octubre del 2018 y <<PRELIMINARY APPROVAL DATE>>.

**POR FAVOR LEA ESTE AVISO CUIDADOSAMENTE
ESTE AVISO SE LE PROPORCIONA EN ESPAÑOL E INGLÉS
SUS DERECHOS LEGALES PUEDEN SER AFECTADOS TANTO SI ACTÚA COMO SI NO**

Usted puede tener derecho a recibir dinero de este Acuerdo. Los registros de Red Pointe muestran que usted fue empleado por Red Pointe como un empleado no exento en California en algún momento entre el 12 de octubre del 2018 y <<PRELIMINARY APPROVAL DATE>> (el "Período de la Clase"). La Corte ordenó que se le envíe este Aviso porque usted puede tener derecho a recibir dinero conforme al Acuerdo y porque el Acuerdo afecta sus derechos legales.

El propósito de este Aviso es proporcionarle una breve descripción de la demanda colectiva y representativa identificada en la parte superior de esta página ("Demanda"), para informarle de los términos del Acuerdo, para describir sus derechos en relación con el Acuerdo, y para explicarle qué pasos puede seguir para participar en, objetar a o excluirse del Acuerdo. Si no se excluye del Acuerdo y la Corte finalmente aprueba el Acuerdo, usted estará obligado por los términos del Acuerdo y cualquier sentencia final. La sentencia final se publicará en línea en <<ADMIN WEBSITE URL>>.

¿De qué se trata este caso?

El Demandante Mario Alvarado ("Demandante") presentó esta Demanda en contra de Red Pointe, afirmando los reclamos en contra de todos los Miembros de la Clase del Acuerdo. El Demandante se conoce como el "Representante de la Clase," y los abogados del Demandante, quienes también representan los intereses de todos los Miembros de la Clase del Acuerdo, se conocen como los "Abogados de la Clase."

En la Demanda, el Demandante alega que Red Pointe: (1) no pagó todos los salarios mínimos; (2) no pagó todos los salarios de las horas extras; (3) no proporcionó todos los períodos de comida; (4) no autorizó ni permitió todos los períodos de descanso; (5) no reembolsó los gastos de negocio necesarios; (6) no emitió las declaraciones salariales precisas y detalladas; (7) no pagó oportunamente todos los salarios finales debidos después de la separación del empleo; (8) participó en competencia desleal; y (9) es responsable de sanciones civiles conforme a la Ley General de Abogados Privados ("PAGA," por sus siglas en inglés).

Red Pointe niega haber hecho algo malo. Red Pointe niega que deba a los Miembros de la Clase del Acuerdo salarios, restituciones, sanciones u otros daños. En consecuencia, el Acuerdo constituye un compromiso de los reclamos en disputa y no debe interpretarse como una admisión de responsabilidad por parte de Red Pointe, que niega expresamente toda responsabilidad.

La Corte no ha decidido sobre los méritos de los reclamos del Demandante. Sin embargo, para evitar gastos adicionales, inconveniencias e interferencias en las operaciones de negocio, las partes han llegado a la conclusión de que es en el mejor interés de Red Pointe y de los Miembros de la Clase del Acuerdo resolver la Demanda según los

términos resumidos en este Aviso. Después de que Red Pointe proporcionó la información pertinente a los Abogados de la Clase, se logró el Acuerdo después de la mediación y las negociaciones entre las partes.

El Representante de la Clase y los Abogados de la Clase apoyan el Acuerdo. Entre las razones de apoyo se encuentran las defensas de responsabilidad potencialmente disponibles para Red Pointe, el riesgo de rechazo de la certificación de la clase, los riesgos inherentes de un juicio sobre los méritos y los retrasos e incertidumbres asociados con un litigio continuo.

Si usted aún está empleado por Red Pointe, su decisión de participar o no en el Acuerdo no afectará a su empleo. La ley de California y la política de Red Pointe prohíben estrictamente las represalias ilegales. Red Pointe no tomará ninguna acción adversa de empleo ni tomará represalias o discriminará a ningún Miembro de la Clase del Acuerdo debido a su decisión de participar o no participar en el Acuerdo.

¿Quiénes son los Abogados?

Abogados del Demandante y los Miembros de la Clase del Acuerdo:

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Ste 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Abogados de Red Pointe:

CRUSER, MITCHELL, NOVITZ, SANCHEZ, GASTON & ZIMET, LLP

Stacie Turner (SBN 203831)
sturner@cmlawfirm.com
Suhail Rajakumar (SBN 327595)
srajakumar@cmlawfirm.com
800 Wilshire Boulevard, 15th Floor
Los Angeles, California 90017
Tel: (213) 689-8500
Fax: (213) 689-8501

¿Cuáles son los términos del Acuerdo?

En <<PRELIM APPROVAL DATE>>, la Corte certificó preliminarmente a una clase—solo para los propósitos del acuerdo—de todos los empleados no exentos, actuales y anteriores, de Red Pointe en California que trabajaron en cualquier momento entre el 12 de octubre del 2018 y el <<PRELIMINARY APPROVAL DATE>>. Los Miembros de la Clase del Acuerdo que no presenten una Solicitud de Exclusión del Acuerdo válida y oportuna de conformidad con los procedimientos establecidos en este Aviso estarán obligados por el Acuerdo y liberarán sus reclamos en contra de Red Pointe, como se describe a continuación en la sección “Liberación.”

Red Pointe acordó pagar \$650,000.00 (la “Cantidad Máxima del Acuerdo”) para completamente resolver todos los reclamos en la Demanda, incluyendo los pagos a los Miembros de la Clase del Acuerdo, los honorarios y gastos de los abogados, los costos de administración del acuerdo, el pago a la Agencia de Trabajo y Desarrollo de la Fuerza Laboral de California (“LWDA,” por sus siglas en inglés) por su parte de las sanciones civiles de PAGA, y el pago de mejora del Representante de la Clase. Red Pointe financiará la Cantidad Máxima del Acuerdo dentro de los 30 días de que la Corte conceda la aprobación final del acuerdo, asumiendo que no haya objeciones o apelaciones, o antes del 5 de septiembre del 2024, lo que suceda más tarde.

Las siguientes deducciones de la Cantidad Máxima del Acuerdo se solicitarán por las partes:

Costos de la Administración del Acuerdo. La Corte ha aprobado que CPT Group, Inc. funcione como el “Administrador del Acuerdo,” quien le está enviando este Aviso y quien realizará muchas otras tareas relacionadas con el Acuerdo. La Corte ha aprobado reservar hasta \$10,000.00 de la Cantidad Máxima del Acuerdo para pagar los costos de la administración del acuerdo.

Honorarios y Gastos de Abogados. Los Abogados de la Clase han estado procesando la Demanda en nombre de los Miembros de la Clase del Acuerdo sobre la base de honorarios de contingencia (es decir, sin recibir ningún pago hasta la fecha) y han estado pagando todos los costos y gastos del litigio. La Corte determinará la cantidad

real concedida a los Abogados de la Clase como los honorarios de los abogados, que serán pagados de la Cantidad Máxima del Acuerdo. Los Miembros de la Clase del Acuerdo no son personalmente responsables de ninguno de los honorarios o gastos de los Abogados de la Clase. Los Abogados de la Clase solicitarán honorarios de hasta un tercio del Fondo Máximo del Acuerdo (que actualmente se estima ser de \$216,666.67) como una compensación razonable por el trabajo que los Abogados de la Clase realizaron y continuarán realizando en esta Demanda hasta la finalización del Acuerdo. Los Abogados de la Clase también solicitarán el reembolso de hasta \$20,000.00 por costos verificados en los que incurrieron los Abogados de la Clase en relación con la Demanda.

Pago de Mejora del Representante de la Clase. Los Abogados de la Clase le pedirán a la Corte que le conceda \$7,500.00 al Demandante como un pago de mejora para el Representante de la Clase. Esto tiene el propósito de compensar al Demandante por el servicio y el trabajo adicional proporcionado en nombre de los Miembros de la Clase del Acuerdo.

Pago de PAGA al Estado de California. Las partes han acordado asignar \$50,000.00 de la Cantidad Máxima del Acuerdo como sanciones civiles de PAGA. De conformidad con la § 2699(i) del Código Laboral, el 75% de dichas sanciones (\$37,500.00) se pagará a la LWDA por su parte de las sanciones de PAGA, y el 25% que resta (\$12,500.00) se pagará a los individuos con el derecho a PAGA (los “Miembros de PAGA”) como parte de la Cantidad Neta del Acuerdo.

Cálculo de los Pagos Individuales del Acuerdo a los Miembros de la Clase. Después de deducir las cantidades aprobadas por la Corte mencionadas anteriormente, el resto de la Cantidad Máxima del Acuerdo formará la Cantidad Neta del Acuerdo, que se distribuirá a todos los Miembros de la Clase del Acuerdo que no presenten una Solicitud de Exclusión válida y oportuna (descrita a continuación). La Cantidad Neta del Acuerdo se dividirá de la siguiente manera:

- (i) La parte del 25% de las sanciones civiles de PAGA (\$12,500.00) se distribuirá a los Miembros de PAGA proporcionalmente sobre la base del número de periodos de pago que cada uno trabajó para Red Pointe en California entre el 12 de octubre del 2021 y <<PRELIMINARY APPROVAL DATE>> (el “Periodo de PAGA”).
- (ii) El 10% de la Cantidad Neta del Acuerdo se distribuirá a los Miembros de la Clase del Acuerdo de manera proporcional sobre la base del número de semanas de trabajo que cada uno trabajó para Red Pointe en California entre el 12 de octubre del 2021 y la <<PRELIMINARY APPROVAL DATE>>.
- (iii) El 10% de la Cantidad Neta del Acuerdo se distribuirá en partes iguales a los Miembros de la Clase del Acuerdo que separaron su empleo con Red Pointe en o después del 12 de octubre del 2019.
- (iv) El resto de la Cantidad Neta del Acuerdo se distribuirá a los Miembros de la Clase del Acuerdo participantes sobre la base de su número proporcional de semanas de trabajo trabajadas entre el 12 de octubre del 2018 y <<PRELIMINARY APPROVAL DATE>>, multiplicando la Cantidad Neta del Acuerdo restante por una fracción, cuyo numerador es el total de semanas de trabajo del Miembro de la Clase del Acuerdo trabajadas durante el Periodo de la Clase, y cuyo denominador es el número total de semanas de trabajo trabajadas por todos los Miembros de la Clase del Acuerdo participantes durante el Periodo de la Clase.

Pagos Individuales del Acuerdo a los Miembros de la Clase del Acuerdo. Si la Corte concede la aprobación final del Acuerdo, se enviarán por correo los Pagos Individuales del Acuerdo a los Miembros de la Clase del Acuerdo que no presentaron una Solicitud de Exclusión válida y oportuna. Cada Miembro Participante de la Clase del Acuerdo que reciba un Pago Individual del Acuerdo debe cobrar ese cheque dentro de los 180 días a partir de la fecha en que el Administrador del Acuerdo lo envíe por correo. El Administrador del Acuerdo distribuirá los fondos que correspondan con los cheques que no se hayan cobrado dentro del plazo de 180 días para el cobro de cheques a la organización designada como cy pres, Community Legal Aid SoCal, una organización 501(c)(3) dedicada a prestar servicios legales a la población indigente del Condado de Orange.

Asignación e Impuestos. Cada Pago Individual del Acuerdo se asignará como 2/3 de sanciones e intereses y 1/3 de salarios. El Administrador del Acuerdo será responsable de emitir a los Miembros Participantes de la Clase del Acuerdo una Forma 1099 del IRS (para las cantidades pagadas como sanciones e intereses) y una Forma W2 del IRS

(para las cantidades pagadas como salarios). Los pagos realizados a los Miembros de PAGA se atribuirán en un 100% a sanciones y se pagarán a través de una Forma 1099 del IRS. El Administrador del Acuerdo se encargará de calcular y retener todos los impuestos sobre la participación de los empleados en el empleo y otras retenciones legalmente exigidas de cada Pago Individual del Acuerdo.

Liberación. Si la Corte aprueba el Acuerdo, cada Miembro de la Clase del Acuerdo que no haya presentado una Solicitud de Exclusión válida y oportuna liberará y exonerará completamente a Red Pointe, a sus pasados y presentes funcionarios, directores, accionistas, gerentes, empleados, agentes, principales, herederos, representantes, contadores, auditores, consultores, y a sus respectivos sucesores y predecesores en interés, subsidiarias, filiales, matrices y abogados (colectivamente, las “Partes Liberadas”) de todos los reclamos, demandas, derechos, responsabilidades y causas de acción que se alegaron en la demanda operativa en la Demanda, o que podrían haberse alegado sobre la base de las alegaciones de hecho en la misma, que surgieron durante el Período de la Clase (colectivamente, los “Reclamos Liberados de la Clase”). El periodo de tiempo cubierto por esta liberación reflejará el Periodo de la Clase y comenzará a regir a partir de la Fecha Efectiva (definida a continuación).

Los Miembros de PAGA, sin importar si optan por no participar en el Acuerdo, liberarán y eximirán a Red Pointe y a las Partes Liberadas de todas las sanciones civiles adeudadas conforme a PAGA, basadas en los hechos, los reclamos, las causas de acción o las teorías legales declaradas en la demanda operativa en la Demanda (o en la carta del Demandante a la LWDA fechada el 13 de octubre del 2022), que surgieron durante el Período de PAGA (colectivamente los “Reclamos Liberados de PAGA”). El periodo de tiempo cubierto por esta liberación reflejará el Período de PAGA y será definitivo en la Fecha Efectiva.

Condiciones del Acuerdo y la “Fecha Efectiva.” El Acuerdo, junto con las liberaciones asociadas, está condicionado a que se produzcan todos los siguientes: (i) el Acuerdo ha sido acordado por todas las Partes y sus respectivos abogados; (ii) la Corte ha concedido su aprobación preliminar al Acuerdo; (iii) el aviso ha sido enviado a la Clase del Acuerdo, proporcionando la oportunidad de disputar la información contenida en los Avisos del Acuerdo de los Pagos, de optar por no participar en el Acuerdo o de oponerse al Acuerdo; (iv) la Corte ha llevado a cabo una audiencia de aprobación final y ha dictado una orden y sentencia final que certifique la Clase del Acuerdo y aprueba este Acuerdo.

El Acuerdo será definitivo una vez que suceda lo último de lo siguiente: (a) la aprobación final del acuerdo por parte de la Corte si no se han presentado objeciones por o en nombre de los Miembros de la Clase del Acuerdo; (b) si ha vencido el plazo para apelar si se ha presentado una objeción y no se ha presentado o retirado ninguna apelación; (c) la resolución final de cualquier apelación que se haya presentado; y (d) el depósito por parte de Red Pointe de la Cantidad Máxima del Acuerdo total al Administrador del Acuerdo (“Fecha Efectiva”).

¿Cómo puedo reclamar dinero del Acuerdo?

Hacer Nada. Si no hace nada, usted tendrá derecho a su Pago Individual del Acuerdo, que se ha calculado para usted sobre la base de la fórmula que se indica anteriormente, tal y como se indica en el Aviso de la Adjudicación del Acuerdo adjunto. Usted también estará obligado por el Acuerdo, incluyendo la liberación de los reclamos que se indican anteriormente.

¿Qué otras opciones tengo?

Información de Disputa en el Aviso de la Adjudicación del Acuerdo. Su adjudicación se basa en la cantidad proporcional de semanas de trabajo que trabajó durante el Período de la Clase y el número de periodos de pago que trabajó durante el Período de PAGA. La información contenida en los registros de Red Pointe con respecto a esta información, junto con su Pago del Acuerdo Individual estimado, se indica en el Aviso de la Adjudicación del Acuerdo adjunto. Si no está de acuerdo con la información contenida en su Aviso de la Adjudicación del Acuerdo, usted puede presentar una disputa, junto con la documentación de apoyo, de acuerdo con los procedimientos establecidos en el Aviso de la Adjudicación del Acuerdo. Cualquier disputa, junto con la documentación de apoyo, debe tener el sello postal a no más tardar el **<<RESPONSE DEADLINE>>**. **NO ENVÍE LOS ORIGINALES; LA DOCUMENTACIÓN ENVIADA AL ADMINISTRADOR DEL ACUERDO NO SERÁN DEVUELTOS NI CONSERVADOS.**

Las Partes y el Administrador del Acuerdo evaluarán las pruebas presentadas y discutirán en buena fe cómo resolver las disputas presentadas por los Miembros de la Clase del Acuerdo. Si no se puede resolver una disputa, cualquier disputa pendiente se presentará a la Corte para su decisión final.

Excluirse del Acuerdo. Si **no** desea participar en el Acuerdo, usted puede excluirse enviando al Administrador del Acuerdo la “Forma de Solicitud de Exclusión” adjunta, con el sello postal a no más tardar el a <<RESPONSE DEADLINE>>, con su nombre, dirección, número de teléfono, los últimos cuatro dígitos de su número de seguro social y su firma.

Envíe la Solicitud de Exclusión directamente al Administrador del Acuerdo en <<ADMINISTRATOR CONTACT INFO>>. Cualquier persona que presente una Solicitud de Exclusión del Acuerdo oportunamente, una vez que sea recibida por el Administrador del Acuerdo, ya no será un Miembro de la Clase del Acuerdo, estará prohibido de participar en cualquier parte del Acuerdo, y no recibirá ningún beneficio del Acuerdo. **No presente una Disputa y una Solicitud de Exclusión al mismo tiempo.** Si lo hace, la Solicitud de Exclusión no será válida, usted estará incluido en la Clase del Acuerdo, y usted estará obligado por los términos del Acuerdo.

Además, todas las Solicitudes de Exclusión se presentarán a la Corte. El Administrador del Acuerdo hará una decisión inicial con respecto a la elegibilidad de, y las cantidades de, cualquier Pago Individual del Acuerdo conforme a los términos de esta Resolución del Acuerdo. Sin embargo, si el Administrador del Acuerdo, los Abogados de la Clase y los Abogados de Red Pointe no pueden llegar a un acuerdo sobre una resolución, los Abogados de la Clase y los Abogados de Red Pointe presentarán la disputa a la Corte para decidir finalmente con respecto a la disputa. Además, los Abogados de la Clase y los Abogados de Red Pointe presentarán a la Corte todas las disputas presentadas por los Miembros de la Clase del Acuerdo, las pruebas presentadas y la resolución de las disputas, y aunque el Administrador del Acuerdo puede tomar la decisión inicial con respecto a las disputas sobre los reclamos, la Corte puede revisar cualquier decisión tomada por el Administrador del Acuerdo con respecto a una disputa de un reclamo.

Los Miembros de PAGA no pueden optar por la liberación de los reclamos de PAGA y, por lo tanto, recibirán el pago de su parte de las sanciones civiles de PAGA, aún si solicitan la exclusión del Acuerdo y no reciben una porción de la clase de su Pago Individual del Acuerdo. Los Miembros de PAGA estarán obligados por la liberación de los “Reclamos Liberados de PAGA” mencionados anteriormente, sin importar si cobran o no sus cheques por su parte de las sanciones civiles de PAGA.

Objetar el Acuerdo. Usted también tiene derecho a objetar a los términos del Acuerdo. Sin embargo, si la Corte rechaza su objeción, usted aún estará obligado por los términos del Acuerdo. Si usted desea objetar al Acuerdo, o a cualquier parte del mismo, usted puede llenar la “Forma de Objeción” adjunta y enviarla por correo al Administrador del Acuerdo con su nombre, dirección, número de teléfono, los últimos cuatro dígitos de su número de seguro social, y su firma. Las objeciones escritas deben tener el sello postal en o antes del <<RESPONSE DEADLINE>>.

Usted también puede comparecer en la Audiencia de Aprobación Final programada para el <<FINAL APPROVAL HEARING DATE/TIME>> en el Departamento CX104 de la Corte Superior del Condado de Orange, ubicada en 751 West Santa Ana Blvd. Santa Ana, California 92701. La ubicación, fecha y hora de la Audiencia de Aprobación Final pueden cambiar sin previo aviso. Usted puede comunicarse con los Abogados de la Clase utilizando la información de contacto proporcionada anteriormente para confirmar la dirección y la hora de la audiencia si desea comparecer en persona. Usted tiene derecho a comparecer, ya sea en persona o a través de su propio abogado, en esta audiencia para objetar al acuerdo, ya sea que presente o no una objeción por escrito. Si objeta al Acuerdo, seguirá siendo miembro de la Clase del Acuerdo, y si la Corte aprueba el Acuerdo, usted estará obligado por los términos del Acuerdo de la misma manera que los Miembros de la Clase del Acuerdo que no objetan.

¿Cuál es el siguiente paso?

La Corte llevará a cabo una Audiencia de Aprobación Final sobre la adecuación, razonabilidad y equidad del Acuerdo el <<FINAL APPROVAL HEARING DATE/TIME>>, en el Departamento CX104 de la Corte Superior del Condado de Orange, ubicada en 751 West Santa Ana Blvd. Santa Ana, California 92701. La ubicación, fecha y hora de la Audiencia de Aprobación Final pueden cambiar sin previo aviso. Usted puede comunicarse con los Abogados de la Clase utilizando la información de contacto proporcionada anteriormente para confirmar la dirección y la hora de la audiencia. También se le pedirá a la Corte que decida sobre la solicitud de los Abogados de la Clase para los honorarios de abogados y el reembolso de los costos y gastos documentados, el pago de mejora al Representante de la Clase, los

costos del Administrador del Acuerdo y la cantidad relacionada con las sanciones civiles de PAGA. Usted **no** está obligado a asistir a la Audiencia de Aprobación Final.

Si la Corte concede la Aprobación Preliminar del Acuerdo, y después la Aprobación Final del Acuerdo, el Administrador del Acuerdo publicará los siguientes documentos en su sitio web: i) la queja operativa; ii) la(s) carta(s) de aviso de PAGA a la LWDA (incluyendo la carta del Demandante a la LWDA fechada el 13 de octubre del 2022); iii) la Resolución del Acuerdo y cualquier enmienda; iv) el Paquete de Aviso; v) las órdenes que conceden la Aprobación Preliminar y Final; vi) y la Sentencia y Orden Final. El Administrador del Acuerdo publicará los documentos anteriores durante al menos 180 días en el sitio web que se indica a continuación: <<ADMINISTRATOR WEBSITE INFO>>.

¿Cómo puedo obtener información adicional?

Este Aviso es sólo un resumen de la Demanda y del Acuerdo. Para obtener más información, usted puede ver el expediente en línea para este caso utilizando la búsqueda en línea en <https://civilwebshopping.occourts.org/Search.do#searchAnchor> e ingresando el número de caso (01286100) y el año de presentación (2022). Usted también puede comunicarse con los Abogados de la Clase utilizando la información de contacto que se indica anteriormente para obtener más información.

POR FAVOR NO LLAME O ESCRIBA A LA CORTE, A RED POINTE, O A SUS ABOGADOS PARA INFORMACIÓN SOBRE ESTE ACUERDO O EL PROCESO DEL ACUERDO

RECORDATORIO EN CUANTO A LAS FECHAS LÍMITES

La fecha límite para presentar cualquier Disputa, Solicitud de Exclusión u Objeción es <<RESPONSE DEADLINE>>.

AVISO DE LA ADJUDICACIÓN DEL ACUERDO

ALVARADO v. RED POINTE ROOFING, L.P.

CORTE SUPERIOR DEL CONDADO DE ORANGE, CASO NO. 30-2022-01286100-CU-OE-CXC

Por favor, llene por completo, firme, feche y devuelva esta Forma a <<ADMINISTRATOR CONTACT INFO>> **SOLO SI** (1) su información personal de contacto ha cambiado, y/o (2) usted desea disputar cualquiera de la información que se indica en la Sección (III), a continuación. Es su responsabilidad mantener su dirección actual archivada con el Administrador del Acuerdo.

(I) Por favor, escriba su nombre a máquina o con letra de molde: Please type or print your name:

(Primero, Segundo, Apellido)

(II) Por favor, escriba a máquina o con letra de molde la siguiente información de identificación si su información de contacto ha cambiado:

Nombres Anteriores (si hay alguno)

Nueva Dirección Postal

Ciudad

Estado

Código Postal

(III) Información Utilizada para Calcular su Pago Individual del Acuerdo:

Según los registros de Red Pointe:

- (a) Usted trabajó _____ semanas de trabajo para Red Pointe como un empleado no exento en California entre el 12 de octubre del 2018, y <<PRELIMINARY APPROVAL DATE>>;
- (b) Hubo _____ semanas de trabajo en total trabajadas por los empleados no exentos en California entre el 12 de octubre del 2018 y el <<PRELIMINARY APPROVAL DATE>>;
- (c) Usted trabajó _____ períodos de pago para Red Pointe como un empleado no exento en California entre el 12 de octubre del 2018, y <<PRELIMINARY APPROVAL DATE>>;
- (d) Hubo _____ períodos de pago en total trabajados por los empleados no exentos en California entre el 12 de octubre del 2018 y el <<PRELIMINARY APPROVAL DATE>>; y
- (e) Usted <<SI SE/NO SE>> separo de su empleo con Red Pointe en o antes del 12 de octubre del 2019.

Según lo anterior, su Pago Individual de PAGA se estima ser de \$ _____ y su Pago Individual de PAGA se estima ser de \$ _____.

(IV) Si usted no está de acuerdo con los datos (a) - (e) de la Sección (III) anterior, por favor explique por qué en el espacio proporcionado a continuación e incluya copias de cualquier prueba o documentación de apoyo con esta forma:

Si usted disputa la información anterior de los registros de Red Pointe, esos registros dominarán a menos de que usted pueda proporcionar la documentación que establezca que los registros de Red Pointe están equivocados. Si hay una disputa sobre si la información de Red Pointe o la suya es correcta, y la disputa no puede resolverse de manera informal, las Partes y el Administrador del Acuerdo resolverán la disputa tal y como se describe en el Aviso de la Clase que acompaña esta Forma. Cualquier disputa no resuelta será presentada a la Corte para una decisión final.

**CUALQUIER DISPUTA, JUNTO CON LA DOCUMENTACIÓN DE APOYO, DEBE TENER EL SELLO
POSTAL A NO MÁS TARDAR EL <<RESPONSE DEADLINE>>.**

Firma: _____

Fecha: _____

FORMA DE SOLICITUD DE EXCLUSIÓN

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
CORTE SUPERIOR DEL CONDADO DE ORANGE, CASO NO. 30-2022-01286100-CU-OE-CXC

SI NO DESEA SER PARTE DEL ACUERDO DE LA DEMANDA COLECTIVA, USTED DEBE LLENAR POR COMPLETO, FIRMAR Y ENVIAR POR CORREO ESTA FORMA, CON EL SELLO POSTAL EN O ANTES DE **[RESPONSE DEADLINE], DIRIGIDA COMO SIGUE:**

CPT GROUP, INC.
MARIO ALVARADO V. RED POINTE ROOFING, L.P.
SETTLEMENT ADMINISTRATOR
<<ADMINISTRATOR CONTACT INFO>>

NO PRESENTE ESTA FORMA SI USTED DESEA RECIBIR UN PAGO CONFORME AL ACUERDO.

Al firmar, llenar por completo y devolver esta forma, confirmo que **no deseo** estar incluido en el Acuerdo de la demanda titulada *MARIO ALVARADO V. RED POINTE ROOFING, L.P.*, Caso No. 30-2022-01286100-CU-OE-CXC de la Corte Superior del Condado de Orange.

DESEO SER EXCLUIDO DE LA CLASE DEL ACUERDO EN LA DEMANDA MARIO ALVARADO V. RED POINTE ROOFING, L.P., PRESENTADA EN LA CORTE SUPERIOR DEL CONDADO DE ORANGE, CASO NO. 30-2022-01286100-CU-OE-CXC. ENTIENDO QUE SI SOLICITO SER EXCLUIDO DE LA CLASE DEL ACUERDO, NO RECIBIRÉ NINGÚN DINERO DEL ACUERDO DE ESTA DEMANDA.

Nombre

Número de Teléfono

Dirección

Fecha

Firma

Últimos Cuatro Dígitos del Número de Seguro Social: ____ ____ ____ ____

FORMA DE OBJECCIÓN

MARIO ALVARADO V. RED POINTE ROOFING, L.P.
CORTE SUPERIOR DEL CONDADO DE ORANGE, CASO NO. 30-2022-01286100-CU-OE-CXC

Si usted desea objetar al acuerdo, o a cualquier parte del mismo, usted puede llenar por completo, firmar y enviar por correo esta forma, con el sello postal en o antes del **[RESPONSE DEADLINE]**, dirigida como sigue:

CPT GROUP, INC. <i>MARIO ALVARADO V. RED POINTE ROOFING, L.P.</i> SETTLEMENT ADMINISTRATOR <<ADMINISTRATOR CONTACT INFO>>
--

Información del Miembro de la Clase que está objetando:

Nombre	Número de Teléfono
--------	--------------------

Dirección Postal

Fecha	Firma
-------	-------

Últimos Cuatro Dígitos del Número de Seguro Social: ____ ____ ____ ____

Describa la naturaleza y el motivo de cada objeción y por favor adjunte las páginas adicionales si es necesario:

EXHIBIT 9

1
2
3
4
5
6
7 **HAINES LAW GROUP, APC**
8 Paul K. Haines (SBN 248226)
9 phaines@haineslawgroup.com
10 Fletcher W. Schmidt (SBN 286462)
11 fschmidt@haineslawgroup.com
12 Andrew J. Rowbotham (SBN 301367)
13 arowbotham@haineslawgroup.com
14 2155 Campus Drive, Suite 180
15 El Segundo, California 90245
16 Tel: (424) 292-2350
17 Fax: (424) 292-2355

Attorneys for Plaintiff

18
19
20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF ORANGE**
22
23
24
25
26
27
28

MARIO ALVARADO, an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

RED POINTE ROOFING, L.P., a California
Limited Partnership; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01286100-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Melissa R. McCormick, Dept. CX104]*

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

~~Reservation: 74226120~~

Date: ~~May 30~~ October 24, 2024

Time: 2:00 p.m.

Dept.: CX104

Action Filed: October 12, 2022

Trial Date: None Set

1 The Motion of Plaintiff Mario Alvarado (“Plaintiff”) for Preliminary Approval of Class
2 Action and PAGA Settlement came regularly for hearing before this Court on ~~May 30~~October 24,
3 2024, at 2:00 p.m. The Court, having considered the proposed Stipulation of Settlement (the
4 “Settlement”), attached ~~as Exhibit 1 to the Declaration of Fletcher W. Schmidt filed concurrently~~
5 ~~herewith~~hereto as Exhibit A; having considered The Notice of Class Action and PAGA
6 Settlement, Request For Exclusion Form, and Objection Form (collectively, “Notice Packet”)
7 attached hereto as Exhibit B; having considered Plaintiff’s Supplemental Brief in Support of
8 Motion for Preliminary Approval of Class Action Settlement; having considered Plaintiff’s
9 Motion for Preliminary Approval of Class Action Settlement, Memorandum of Points and
10 Authorities in support thereof, and supporting declarations filed therewith; and good cause
11 appearing, HEREBY ORDERS THE FOLLOWING:

12 ~~1. —The Court~~1. The Court finds that the settlement is fair, adequate and reasonable,
13 and in the best interests of the Settlement Class members. The Court hereby GRANTS
14 preliminary approval of the class action settlement as set forth in the Settlement and finds its
15 terms to be within the range of reasonableness of a settlement that ultimately could be granted
16 approval by the Court at a Final Fairness Hearing. For purposes of the Settlement, the Court finds
17 that the proposed Settlement Class is ascertainable and that there is a sufficiently well-defined
18 community of interest among the members of the Settlement Class in questions of law and fact.
19 Therefore, for settlement purposes only, the Court grants conditional certification of the following
20 Settlement Class:

21 All current and former non-exempt employees of Defendant Red
22 Pointe Roofing, L.P. in California who worked at any time between
23 October 12, 2018, and the date of preliminary approval (the “Class
Period”).

24 2. For purposes of the Settlement, the Court preliminarily designates ~~named~~ Plaintiff
25 Mario Alvarado as Class Representative and preliminarily designates Fletcher W. Schmidt, Paul
26 K. Haines, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel.

27 3. Defendant will pay a non-reversionary Maximum Settlement Amount of
28 \$650,000.00. The Net Settlement Amount is the amount remaining from the Maximum Settlement

1 Amount after deducting the not-to-exceed requested amounts for attorneys' fees (\$216,666.67)
2 and verified costs reimbursement (\$20,000.00), the Class Representative Enhancement Payment
3 (\$7,500.00), settlement administration costs (\$10,000.00), and the California Labor & Workforce
4 Development Agency's ("LWDA") share of civil penalties under the Private Attorneys General
5 Act ("PAGA"), which is 75% of the total amount of PAGA civil penalties (\$37,500.00). Based
6 on these requested amounts, the Net Settlement Amount is calculated to be approximately
7 \$358,333.33. From the Net Settlement Amount, the PAGA Members will receive the remaining
8 25% (\$12,500.00), designated a PAGA civil penalties. The total amount allocated for PAGA civil
9 penalties was therefore \$50,000.00.

10 4. The Court preliminarily designates CPT Group, Inc. as the third-party Settlement
11 Administrator for mailing notices.

12 5. The Court approves, as to form and content, ~~the Notice of Class Action Settlement~~
13 ~~and Notice of Settlement Award (collectively, the "Notice Packet")~~, attached hereto as a
14 ~~combined~~ Exhibit B ~~to the Declaration of Fletcher W. Schmidt~~ and submitted concurrently ~~with~~
15 ~~as Exhibit 3 to the Declaration of Andrew J. Rowbotham in Support of~~ Plaintiff's Supplemental
16 Brief in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement.

17 6. The Court finds that the form of notice to the Settlement Class regarding the
18 pendency of the action and of the Settlement, and the methods of giving notice to members of the
19 Settlement Class constitute the best notice practicable under the circumstances, and constitute
20 valid, due, and sufficient notice to all members of the Settlement Class. The form and method of
21 giving notice complies fully with the requirements of California Code of Civil Procedure § 382,
22 California Civil Code § 1781, California Rules of Court 3.766 and 3.769, the California and
23 United States Constitutions, and other applicable law.

24 7. The Court further approves the procedures for Settlement Class members to opt
25 out of or object to the Settlement, as set forth in the Class Notice.

26 8. The procedures and requirements for filing objections in connection with the Final
27 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
28

1 presentation of any Settlement Class member's objection to the Settlement, in accordance with
2 the due process rights of all Settlement Class members.

3 9. The Court directs the Settlement Administrator to mail the Notice Packet to the
4 members of the Settlement Class in accordance with the terms of the Settlement. The Court directs
5 the Settlement Administrator to carry out all duties as required by the Settlement.

6 10. The Notice Packet shall provide at least 60 calendar days' notice for members of
7 the Settlement Class to opt out of, or object to the Settlement. Any Request for Exclusion ~~or~~,
8 Objection or Dispute shall be submitted directly to the Settlement Administrator and ~~not~~ filed
9 with the Court. Upon receipt of any Requests for Exclusion or Objections, the Settlement
10 Administrator shall forward copies of all Requests for Exclusion and Objections to counsel for
11 all parties. The Settlement Administrator shall file a declaration concurrently with the filing of
12 the Motion for Final Approval of Class Action Settlement which authenticates a copy of every
13 Request for Exclusion and Objection received by the Settlement Administrator. The Settlement
14 Administrator shall give notice to any objecting Settlement Class member of any continuance of
15 the hearing on Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement.

16 11. The Final Fairness Hearing on the question of whether the Settlement should be
17 finally approved as fair, reasonable, and adequate is scheduled in Department CX104 of this
18 Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701 on March 6, 2025, at 2:00
19 p.m. or _____, at _____ a.m./p.m.

20 12. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement
21 should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether
22 a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's
23 application for reasonable attorneys' fees, reimbursement of litigation expenses, enhancement
24 payment to Plaintiff, settlement administration costs, and payment to the ~~Labor and Workforce~~
25 ~~Development Agency ("LWDA")~~ for penalties under the ~~Labor Code Private Attorneys General~~
26 ~~Act ("PAGA")~~ should be granted.

27 13. Counsel for the parties shall file memoranda, declarations, or other statements and
28 materials in support of their request for final approval of the Settlement, attorneys' fees, litigation

expenses, Plaintiff's enhancement payment, settlement administration costs, and payment to the LWDA for PAGA penalties prior to the Final Fairness Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

14. An implementation schedule is below (assuming the Court signs this Order on ~~May 30~~October 24, 2024):

Event	Date
Defendant to provide Settlement Class member information to the Settlement Administrator no later than [10 business days after preliminary approval]:	~~June 13~~ <u>November 7</u> , 2024
Settlement Administrator to mail Notice Packet to Settlement Class members no later than [10 business days from receipt of Settlement Class members' information]:	~~June 27~~ <u>November 22</u> , 2024
Deadline for Settlement Class members to request exclusion from, submit dispute, or object to the Settlement [60 calendar days from mailing of Notice Packet]:	~~August 26, 2024~~ <u>January 21, 2025</u>
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement:	At least 16 court days before Final Fairness Hearing
Final Fairness Hearing:	<u> </u> , 2024 ☐ <u>March 6, 2025</u> , at <u> </u> 2:00 p.m. ☐ <u> </u> , 2025 at <u> </u> a.m. / p.m.

~~15-15.~~ The procedures and schedule for Settlement Class members to submit Requests for Exclusions, Objections, and Disputes will be as follows:

i. Requests for Exclusions

a. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail the Request for Exclusion Form (found in the Notice Packet, attached hereto to Exhibit B) to the Settlement Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline"), which will be January 21, 2025.

b. Any Settlement Class member who completes a Request for Exclusion Form must include their name, address, telephone number, last four digits of your social security number, and signature. The Request for Exclusion Form must be

1 postmarked by the January 21, 2025, Response Deadline. If the Request for
2 Exclusion Form does not contain the Settlement Class member's name, address,
3 telephone number, last four digits of your social security number, and signature,
4 and is not postmarked by the January 21, 2025, Response Deadline, it will not be
5 deemed valid for exclusion from the Settlement.

6 c. PAGA Members may not opt-out of the release of PAGA claims and will thus
7 receive payment for their share of the PAGA Amount even if they request
8 exclusion from the Settlement and do not receive a class portion of their Individual
9 Settlement Payment.

10 ii. Objections

11 a. Any Settlement Class member who wishes to Object to the Settlement must
12 complete and mail the Objection Form (found in the Notice Packet, attached hereto
13 to Exhibit B) to the Settlement Administrator on or before the January 21, 2025
14 Response Deadline.

15 b. Any Settlement Class member who completes an Objection Form must include
16 his/her name, address, last four digits of his/her social security number, and
17 signature. The Objection Form must be postmarked by the January 21, 2025,
18 Response Deadline.

19 c. Any Settlement Class member who wishes to may appear in person or through
20 their own counsel and raise an Objection at the Final Approval Hearing. Settlement
21 Class members need not submit written Objections to be heard by the Court at the
22 Final Approval Hearing. Settlement Class members need not submit written
23 Objections to be heard by the Court at the Final Approval Hearing. If the Court
24 rejects a Settlement Class member's Objection, the Settlement Class member will
25 still be bound by the terms of the Settlement.

26 iii. Disputes

27 a. Each Notice Packet mailed to a Settlement Class member shall disclose the amount
28 of the Settlement Class member's estimated Individual Settlement Payment as

1 well as all of the information that was used to calculate the Individual Settlement
2 Payment. Settlement Class members will have the opportunity, should they
3 disagree with Defendant's records regarding the information stated in the Notice
4 of Settlement Payment, to provide documentation and/or an explanation to show
5 contrary information. Any such dispute, including any supporting documentation,
6 must be mailed to the Settlement Administrator and postmarked by the January
7 21, 2025, Response Deadline.

8 b. The "Notice of Settlement Award" Form (found in the Notice Packet, attached
9 hereto to Exhibit B) contains a section for Settlement Class members to offer
10 written explanations of any disputes and return to the Settlement Administrator for
11 review.

12 c. The Settlement Administrator shall make an initial determination regarding the
13 eligibility for, and the amounts of, any Individual Settlement Payment under the
14 terms of this Settlement Agreement. However, if the Settlement Administrator and
15 the Parties cannot agree on a resolution, the Parties will request the Court make a
16 final determination regarding the dispute. Additionally, the Parties will file with
17 the Court all disputes submitted by Settlement Class Members, the evidence
18 submitted, and the resolution of the disputes, and although the Settlement
19 Administrator may make the initial decision regarding claim disputes, the Court
20 may review any decision made by the Settlement Administrator regarding a claim
21 dispute.

22 16. Pending the Final Fairness Hearing, all proceedings in this action, other than
23 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
24 Order, are stayed.

25 ~~16~~17. Counsel for the parties are hereby authorized to utilize all reasonable procedures
26 in connection with the administration of the Settlement which are not materially inconsistent with
27 either this Order or the terms of the Settlement.

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1 18. The Court will retain jurisdiction to enforce the Settlement pursuant to the
2 California Code of Civil Procedure § 664.6.

3 **IT IS SO ORDERED.**

4 Dated: _____, 2024

5 _____
6 Honorable Melissa R. McCormick
7 Judge of the Superior Court
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EXHIBIT 10

EXHIBIT 11

**LAW & MOTION CALENDAR
TENTATIVE RULINGS**

May 30, 2024

**Judge Melissa R. McCormick
Dept. CX104**

Department CX104 hears law and motion on Thursdays at 2:00 p.m.

Court reporters: Official court reporters typically are not provided in this department for any proceedings. If the parties desire the services of a court reporter, the parties should follow the procedures set forth on the court's website at www.occourts.org.

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 9:00 a.m. the day of the hearing. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted.

Submitting on tentative rulings: If all parties intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5304. Please do not call the department unless all parties submit on the tentative ruling. If all parties submit on the tentative ruling and so advise the court, the tentative ruling will become the court's final ruling and the prevailing party shall give notice of the ruling.

Appearances and public access: Appearances, whether in person or remote, must comply with Civil Procedure Code section 367.75, California Rule of Court 3.672, Orange County Superior Court Local Rule 375, and Orange County Superior Court Appearance Procedure and Information—Civil Unlimited and Complex (pub. 9/9/22).

Unless the court orders otherwise, remote appearances will be conducted via Zoom. All counsel and self-represented parties appearing via Zoom must check in through the court's civil remote appearance website before the hearing begins. Check-in instructions are available on the court's website.

The public may attend hearings by coming to court or via remote access as described above.

Photographing, filming, recording and/or broadcasting court proceedings are prohibited unless authorized pursuant to California Rule of Court 1.150 or Orange County Superior Court Local Rule 180.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also might make a different order. See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442 n.1.

NO.	CASE NAME	MATTER
1	Alvarado v. Red Pointe Roofing, L.P. 2022-01286100	<u>Plaintiff's Motion for Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers filed in support of plaintiff's motion for preliminary approval of a class action and PAGA settlement. The court has the following questions and comments:

		<u>As to the settlement:</u> 1. The phrase "(or Plaintiff's letter to the LWDA dated October 13, 2022)" should be removed from the Settlement Class release (Settlement Agreement ¶ 3(A)). 2. The PAGA Members release (Settlement Agreement ¶ 3(B)) is overbroad. Releases for aggrieved employees other than plaintiff should not release more than the civil penalties available under PAGA based on the facts alleged in the operative complaint and the notice letter to the LWDA. 3. The Settlement Agreement (¶ 3(C)) states that plaintiff agrees to provide the releases therein "[i]n light of Plaintiff's Class Representative Enhancement Payment." This provision is inconsistent with paragraphs 4(C)(3) and 6 of the Settlement Agreement and inconsistent with the description of the Class Representative's Enhancement Payment in the notice. In addition, an enhancement award is not intended to serve as consideration for the release of additional claims, but rather to compensate a class representative for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, in some circumstances, to recognize a class representative's willingness to act as a private attorney general. The court is unlikely to approve a settlement that provides an enhancement award in exchange for a release. 4. In paragraph 3(D) ("Effective Date"), "latter" should be "later," and "and" should be inserted before subsection (d). 5. Why are the individual PAGA payments calculated based on workweeks (rather than pay periods)? Settlement Agreement ¶ 5(B)(i). 6. The class members need not state "the legal and factual bases" for objections. Settlement Agreement ¶ 9(E). 7. Paragraph 9(D) should include that all exclusion requests shall be submitted to the court. 8. Paragraph 9(F) should be revised to state (i) the parties shall file with the court all disputes submitted by class members, the evidence submitted, and the resolution of the disputes, and (ii) although the settlement administrator may make the initial decision regarding claim disputes, the court may review any decision made by the settlement administrator regarding a claim dispute. 9. The declaration(s) filed in support of the motion must inform the court whether the parties, after making
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		reasonable inquiry, are aware of any class, representative or other collective action in any court that asserts claims similar to those asserted in this action. If any such actions are known to exist, the declaration(s) shall also state the name and case number of any such case, the procedural status of that case, and describe the impact of the settlement on that case. 10. The parties and their counsel must state in declarations filed with the court whether they have an interest in the cy pres recipient, including its governance. <u>As to the notice:</u> 11. The notice should be revised consistent with the above. 12. The title of the notice should include "AND PAGA" after "CLASS ACTION" and before "SETTLEMENT." 13. The court prefers that the notice be accompanied by separate objection and exclusion forms. 14. The notice should advise the PAGA class members that they cannot opt out of the settlement and that, even if they do not cash their checks, they will be bound by the release. 15. Class members need not provide "contact information for any attorney representing [the class member] regarding [an] objection," "each specific reason in support of [an] objection," or "any legal or factual support for each objection together with any evidence in support of [an] objection." 16. The second-to-last sentence in the third full paragraph on page 5 should be revised to state: "You have the right to appear either in person or through your own attorney at this hearing to object to the settlement, whether or not you submit a written objection." 17. The notice should state that the settlement administrator will post all key documents on its website, including the operative complaint, the PAGA notice letter(s) to the LWDA, the settlement agreement and any amendments, the notice packet, the orders granting preliminary and final approval, and the judgment. The judgment should be posted for at least 180 days. <u>As to the proposed order (ROA 58):</u> 18. The proposed order should be revised consistent with the above. 19. Counsel's name and contact information should be removed from the caption page of the proposed order. 20. The caption and page 1 lines 1-2 should include "and PAGA" after "Class Action" and before "Settlement."
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		21. The settlement agreement and any amendments thereto, and the notice packet (including certified translations) should be attached to the proposed order as exhibits. 22. The proposed order should include the gross settlement amount, the net settlement amount, the not-to-exceed proposed disbursement amounts, and the PAGA penalties (total and 75/25 amounts). 23. Paragraph 1 should include that the court finds that the settlement is fair, adequate and reasonable, and in the best interests of the class members. 24. In paragraph 2, the word "preliminarily" should be inserted before "designates" in two places. 25. Paragraph 3 is missing. 26. In paragraph 4, the word "preliminarily" should be inserted before "designates." 27. The proposed order should include the procedures and schedule for objections, exclusions and disputes. 28. The proposed order should include a provision that the court will retain jurisdiction to enforce the settlement pursuant to Civil Procedure Code section 664.6. 29. The parties should propose a date for the final approval hearing. The court holds final approval hearings on Thursdays at 2:00 p.m. The motion for final approval should be filed and served at least 16 court days before the final approval hearing. The hearing on plaintiff's motion for preliminary approval of a class action and PAGA settlement is continued to <u>October 24, 2024 at 2:00 p.m.</u> in department CX104 to permit the parties to address and respond to the above issues. <i>See also</i> Department CX104 Guidelines for Approval of Class Action Settlements and PAGA Settlements (www.occourts.org). A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement is directed, rather than "amended settlement agreement," to streamline the court's review. The parties shall also provide redlined copies of any revised documents. Plaintiff is ordered to provide notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended settlement documents, and file a proof of service.
2	Bargar v. Synapse Group, Inc. 2023-01342702	Off calendar.

3	Lopez-Gonzalez v. Alpha Tile & Stone, Inc., et al. 2023-01316441	<u>Defendant Cosentino Group, S.A.'s Motion to Quash</u> Defendant Cosentino Group, S.A. (CG) moves pursuant to Civil Procedure Code section 418.10 to quash service of the summons and complaint for lack of personal jurisdiction. For the following reasons, CG's motion is granted. A. Background CG filed its motion quash on October 12, 2023 (ROA 267). CG argued plaintiffs had not properly served it and that, even if plaintiffs had properly served CG, the court lacks personal jurisdiction over CG. On February 1, 2024, the court denied CG's motion to quash based on improper service (ROA 545). In opposition to the portion of CG's motion based on an alleged lack of personal jurisdiction, plaintiffs argued they should be permitted to conduct jurisdictional discovery before the court ruled on that portion of the motion. As of February 1, 2024, plaintiffs had propounded jurisdictional discovery to CG, but CG had not yet responded to that discovery. The court ruled that plaintiffs should be permitted to conduct discovery regarding CG's alleged contacts with California. Accordingly, the court continued the hearing on CG's motion to quash based on alleged lack of personal jurisdiction to May 30, 2024 "to enable CG to respond to plaintiffs' outstanding jurisdictional discovery (Young Decl. (ROA 484) Exs. 1, 2, 3 & 4), and to enable plaintiff to depose CG's declarant Jorge Cuervo Vela on jurisdictional issues, should plaintiffs desire to do so." ROA 545. The court's order states that plaintiffs may submit a supplemental opposition brief of no more than 15 pages, and any supporting documents, 9 court days before May 30, 2024, and that CG may submit a supplemental reply brief of no more than 10 pages, and any supporting documents, 5 court days before May 30, 2024. <i>Id.</i> On May 16, 2024 plaintiffs filed a half-page supplemental memorandum and a declaration from plaintiffs' counsel (ROA 834). Plaintiffs' supplemental memorandum argues that the court should deny CG's motion to quash based on improper service because other courts have done so. Supp. Memo. (ROA 834) at 1:3-14. As stated above, the court already denied that portion of CG's motion on February 1, 2024. Plaintiffs' supplemental memorandum does not address the personal jurisdiction portion of CG's motion. Most of plaintiffs' counsel's accompanying declaration also addresses CG's motion to quash based on improper service. Metzger Decl. (ROA 834) ¶¶ 3-6 & Exs. A, B. Paragraph 7 of the Metzger Declaration states, in its entirety: "Jorge Cuervo Vela appeared for his deposition on May 6th but we have not yet received the transcript and need time to prepare supplemental papers. I therefore respectfully request that the
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		hearing on Cosentino’s motion to quash be continued to a date in mid-June or July.” <i>Id.</i> ¶ 7. Construing paragraph 7 of counsel’s declaration as a motion to continue the May 30, 2024 hearing on CG’s motion to quash based on an alleged lack of personal jurisdiction, the motion is denied. As stated above, the court continued the prior hearing to enable plaintiffs to receive responses to their outstanding jurisdictional discovery to CG and to enable plaintiffs to depose Vela on jurisdictional issues. Plaintiffs do not address the then-outstanding jurisdictional discovery at all. Plaintiffs also do not explain why they waited more than three months to depose Vela. In sum, paragraph 7 of counsel’s declaration does not show good cause for a second continuance of CG’s motion. B. Burden and Evidence When a nonresident defendant moves to quash service of a summons for lack of specific jurisdiction, the plaintiff has the initial burden of demonstrating, by a preponderance of the evidence, facts justifying the exercise of jurisdiction. <i>Ziller Electronics Lab GmbH v. Superior Ct.</i> (1988) 206 Cal.App.3d 1222, 1232-33; <i>Sacramento Suncreek Apts., LLC v. Cambridge Advantaged Props. II, L.P.</i> (2010) 187 Cal.App.4th 1, 9. The plaintiff must do more than allege jurisdictional facts; the plaintiff must provide affidavits and other authenticated documents that demonstrate competent evidence of jurisdictional facts. <i>BBA Aviation PLC v. Superior Ct.</i> (2010) 190 Cal.App.4th 421, 428-29; <i>Ziller</i>, 206 Cal.App.3d at 1233. Once the plaintiff has met its initial burden, the burden shifts to the defendant to present “a compelling case” that the exercise of jurisdiction would be unreasonable. <i>BBA Aviation PLC</i>, 190 Cal.App.4th at 429. When evaluating the evidence presented in a motion to quash, the court may ignore incompetent evidence, whether or not the party against whom the evidence is presented objects to the evidence. <i>Inselberg v. Inselberg</i> (1976) 56 Cal.App.3d 484, 489. C. General Jurisdiction Personal jurisdiction over a nonresident defendant may be either general or specific. <i>Daimler AG v. Bauman</i> (2014) 134 S.Ct. 746, 754-55. Whether a court has general or specific jurisdiction depends on the extent and nature of the defendant’s activities in California. General jurisdiction exists when a nonresident has substantial, continuous, and systematic contacts with the forum state. Such wide-ranging contacts take the place of physical presence in the state as a basis for jurisdiction. <i>Goodyear Dunlop Tires Operations, S.A. v. Brown</i> (2011) 131 S.Ct. 2846, 2851. Only a limited set of affiliations with a forum will make a nonresident defendant amenable to all-purpose jurisdiction there. <i>Daimler</i>, 134 S.Ct. at 760. For general jurisdiction purposes, a nonresident defendant’s contacts must be comparable to a domestic enterprise in the state. <i>Id.</i> at 758 n.11, 761.
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		D. Specific Jurisdiction When a nonresident defendant does not have sufficient contacts with California for general jurisdiction, it may be subject to specific jurisdiction if it has purposefully availed itself of the benefits of doing business in California and the cause of action is related to or arises from its contacts with California. <i>J. McIntyre Mach., Ltd. v. Nicastro</i> (2011) 131 S.Ct. 2780, 2787-88; <i>Epic Communications, Inc. v. Richwave Tech., Inc.</i> (2009) 179 Cal.App.4th 314, 327. The exercise of jurisdiction must also comport with fair play and substantial justice. <i>Id.</i>; <i>Vons Companies Inc. v. Seabest Foods</i> (1996) 14 Cal.4th 434, 446-47. Courts may evaluate the defendant's burden in appearing in a California court, California's interest in adjudicating the claim, the plaintiff's interest in obtaining convenient and effective relief in California, judicial economy, and the shared interest of the several states in furthering substantive social policies. <i>Id.</i> at 448. The inquiry regarding whether a forum state may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation. <i>Walden v. Fiore</i> (2014) 134 S.Ct. 1115, 1121. For a court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum state. <i>Bristol-Myers Squibb Co. v. Superior Ct.</i> (2017) 137 S.Ct. 1773, 1781. E. Discussion Plaintiffs do not contend the court has general jurisdiction over CG. The court thus confines its discussion to specific jurisdiction. CG is a holding company organized under the laws of Spain. Vela Decl. (ROA 266) ¶¶ 4, 6. Its headquarters are in Spain and it operates exclusively in Spain. <i>Id.</i> ¶ 4. It has never conducted any business in California. <i>Id.</i> ¶ 5. Plaintiffs' evidence in support of the exercise of jurisdiction consists largely of internet webpage captures and other documents apparently printed from the internet. These webpages and documents are attached as Exhibits A through Z to the Requests for Admissions attached as Exhibit 1 to the Metzger Declaration (ROA 486). As plaintiffs concede, this evidence is inadmissible. Opp. (ROA 478) at 17:10-11 ("However, most of the evidence that Plaintiff has found is not admissible."). CG's Evidentiary Objections (ROA 527) are sustained. Accordingly, plaintiffs' arguments in opposition to CG's motion lack supporting, admissible evidence. As such, plaintiffs have not met their initial burden to demonstrate, by a preponderance of the evidence, facts justifying the exercise of specific personal jurisdiction over CG. <i>See, e.g., Sacramento Sun creek Apts.,</i>
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		187 Cal.App.4th at 9; <i>BBA Aviation PLC</i>, 190 Cal.App.4th at 430; <i>Strasner v. Touchstone Wireless Repair & Logistics, LP</i> (2016) 5 Cal.App.5th 215, 224. Because plaintiffs did not meet their initial burden, the burden did not shift to CG to present “a compelling case” that the exercise of jurisdiction would be unreasonable. <i>BBA Aviation PLC</i>, 190 Cal.App.4th at 429. Defendant Cosentino Group, S.A. to give notice.
4	Mora v. Diamond ZB Staffing Services, LLC 2019-01104920	The hearing on this motion and the status conference are continued to May 31, 2024 at 10:00 a.m. in Department CX104 or via Zoom. <u>Defendant Diamond ZB Staffing Services, LLC’s Motion to Rescind Settlement Agreement</u> Defendant Diamond ZB Staffing Services, LCC moves for an order declaring its October 14, 2021 settlement agreement with plaintiff Marisela Mora rescinded, directing Mora to return the \$10,000 settlement payment, setting aside the dismissal of Mora’s individual claims and ordering those claims to arbitration, staying Mora’s nonindividual PAGA claims, and awarding Diamond ZB attorneys’ fees and costs “related to the settlement agreement.” For the following reasons, Diamond ZB’s motion is denied. <i>Relevant factual and procedural background</i> In a June 15, 2023 order (ROA 374), the court (Judge Peter Wilson) granted plaintiff’s motion for summary adjudication of two issues regarding plaintiff’s sixth cause of action for wage statement violations under PAGA, i.e. , that Diamond ZB violated Labor Code section 226(a)(7) as a matter of law because Diamond ZB showed the full nine digits of the social security numbers of plaintiff and other employees on the wage statements Diamond ZB furnished plaintiff and those other employees (Issue No. 1), and that Diamond ZB has no defense on the issue of liability as to the sixth cause of action because Diamond ZB showed the full nine digits of the social security numbers of plaintiff and other employees on the wage statements Diamond ZB furnished plaintiff and those other employees (Issue No. 2). Diamond ZB moved to set aside, and for reconsideration of, the June 15, 2023 order. Diamond ZB argued that certain evidence that supported Mora’s summary adjudication motion was “now highly disputed, if not entirely false,” i.e., Diamond ZB asserted that Mora “may not actually be the legal owner of the social security number [plaintiff] claims was printed on her pay stub.” Motion to Set Aside (ROA 463) at 1:21-22. The court denied Diamond ZB’s motion to set aside and for reconsideration on December 21, 2023 (ROA 665). On January 24, 2024 Diamond ZB filed the instant motion. In this motion, Diamond ZB argues that the parties’ October 14, 2021 settlement agreement should be rescinded based on fraud and lack of consideration because Diamond ZB allegedly “entered into th[e] settlement based on [Mora’s] representation

		that the SSN ending in 3469 . . . belonged to her.” Motion (ROA 726) at 1:15-17. The October 14, 2021 settlement agreement settled Mora’s individual claims against Diamond ZB. Jusuf Decl. (ROA 876) Ex. 11. Recital B to the agreement states: “Mora alleges that she was employed by Diamond and assigned to work for Capital Logistics, that Diamond printed the full nine digits of her social security number on the wage statements that Diamond furnished her, in violation of Labor Code § 226(a)(7), that Diamond failed to provide her with meal periods and failure to pay premium wage in lieu thereof, in violation of Labor Code § 226.7, that Diamond failed to provide her with rest periods and failed to pay premium wage in lieu thereof, in violation of Labor Code § 226.7, and that Diamond failed to reimburse her for the cost of buying cutting blades she used for work, in violation of Labor Code § 2802. In addition, Mora alleges claims for civil penalties under the Labor Code Private Attorneys General Act (‘PAGA’) based on the foregoing alleged Labor Code violations. Diamond denies any and all such claims and allegations or that it engaged in any other wrongful conduct or violations.” Jusuf Decl. (ROA 876) Ex. 11 (Recital B, at 1). Recital H states: “The Parties acknowledge and represent that they are fully competent to enter into this Agreement, that they have had a reasonable amount of time in which to consider this Agreement before executing it, that they have been advised by their respective attorneys about its terms and effect, and that they enter into this Agreement knowingly and voluntarily.” <i>Id.</i> Ex. 11 (Recital H, at 2). The parties agreed that in exchange for Diamond ZB’s payment of \$10,000 (\$3,500 to Mora and \$6,500 to her attorneys), Mora would dismiss her individual claims against Diamond ZB and release Diamond ZB and “its members, managers, directors, officers, employees, predecessors, successors, assigns, affiliates, parent companies/entities, subsidiaries, related companies/entities, shareholders, owners, attorneys, insurers, and agents from the Released Individual Claims.” <i>Id.</i> Ex. 11 (¶ 2(a), at 3). The agreement defines the “Released Individual Claims” as: “Mora’s individual claims asserted against Diamond in the Action that arose during her employment with Diamond, from June 14, 2019 to July 7, 2019, for the alleged improper printing of the full nine digits of her social security number on the wage statements Diamond furnished her, in violation of Labor Code § 226(a)(7); alleged failure to provide her with meal periods and failure to pay premium wage in lieu thereof, in violation of Labor Code § 226.7; alleged failure to provide her with rest periods and failure to pay premium wage in lieu thereof, in violation of Labor Code § 226.7, and alleged failure to reimburse
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		her for the cost of buying cutting blades she used for work, in violation of Labor Code § 2802 as set forth in the arbitration with the American Arbitration Association ("AAA"), Case Number: 01-21-0003-6795 (the 'Arbitration') and as set forth in the civil case Marisela Mora, individually and on behalf of others similarly situated, Plaintiff, vs. Diamond ZB Staffing Services, LLC; Capital Logistics; JCR Services, LLC; and Does 1-50, Defendants, Case No. 30-2019-01104920-CU-OE-CXC." <i>Id.</i> The agreement provides that nothing in the agreement will be construed to release the PAGA claims asserted in the lawsuit against Diamond ZB or any other defendants or Mora's individual and class claims alleged in the lawsuit against other defendants. <i>Id.</i> Ex. 11 (¶ 2(b)). Paragraph 9 of the agreement, entitled "Entire Agreement," states: "Entire Agreement. The Parties acknowledge that no promise or inducement has been offered except as set forth in this Agreement and that they execute this Agreement without reliance upon any statement or representation other than what is contained in this Agreement. This Agreement constitutes the entire Agreement between the Parties with respect to the matters that it covers and supersedes all prior and contemporaneous agreements, representations and understandings of the Parties with respect to those matters. This Agreement may be amended only by written agreement, signed by the Party or Parties to be bound by the amendment. Parol evidence will be inadmissible to show agreement by and between the Parties to any term or condition contrary to or in addition to the terms and conditions contained in this Agreement." Jusuf Decl. (ROA 876) Ex. 11 (¶ 9, at 4). <i>Discussion</i> It is far from clear that the settlement agreement may be rescinded by motion in the manner Diamond ZB proceeds here. Assuming for the sake of argument that a settlement agreement can be rescinded via motion as presented here, Diamond ZB's motion still fails. Diamond ZB has not provided any evidence Mora made any representation to Diamond ZB about her social security number in connection with the settlement agreement. The settlement agreement itself contains no evidence she did. The only mutual representations in the settlement agreement are the parties' representations that they (i) are competent to enter into the agreement, (ii) had reasonable time to consider the agreement before signing it, (iii) were advised by their respective attorneys about its terms and effect, and (iv) entered into the agreement knowingly and voluntarily. Mora's representations in the settlement agreement are that (i) she had not assigned or transferred anything released in the Released Individual Claims, and (ii) she had not relied on any tax advice from Diamond ZB. Jusuf Decl. (ROA 876) Ex. 11 (¶¶
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		3, 6); <i>see also id.</i> Ex. 11 (¶ 9). The only mentions of Mora’s social security number in the agreement are (i) in Recital B, which describes what Mora “alleges,” and states Diamond ZB “denies any and all such claims and allegations,” and (ii) in the definition of “Released Individual Claims,” which describes one of Mora’s claims as the “alleged” improper printing of the full nine digits of her social security number on wage statements. Moreover, the Released Individual Claims encompass claims beyond the wage statement claim. In addition, Diamond ZB’s counsel acknowledges that when Diamond ZB entered into the settlement agreement in October 2021, Diamond ZB had not investigated Mora’s social security number or, apparently, her wage statement claim. Diamond ZB’s counsel states in his declaration that Diamond ZB did not “research and investigate” Mora’s social security number until August 2023, i.e., almost two years after Diamond ZB entered into the settlement agreement. Counsel’s declaration states: “Sometime in early August [2023], I began preparing to take [Mora’s] deposition While I was preparing for [Mora’s] deposition, I realized the validity of [Mora’s] SSN was an element and a material fact in Plaintiff’s Labor Code violation claim, as well as an essential fact related to her standing as a PAGA representative. As a result, my client and I began to research and investigate [Mora’s] SSN. As part of the research, a private investigator was retained to conduct an investigation [in]to [Mora’s] SSN. As part of the investigation, various records were pulled from SSN Verifier Plus. . . . As a result of this investigation, we discovered that Plaintiff’s SSN was assigned to another person, Isabella White.” Adreani Decl. (ROA 728) ¶ 7. In sum, Diamond ZB knew when it entered into the settlement with Mora in October 2021 that it had not investigated her wage statement claim. Diamond ZB offers no reasons it could not have conducted that investigation before settling with Mora. To the extent there was a risk arising out of unknown information about Mora’s claims, Diamond ZB assumed that risk when it entered into the settlement. <i>See, e.g., A. J. Indus., Inc. v. Ver Halen</i> (1977) 75 Cal. App. 3d 751, 759. Diamond ZB’s Evidentiary Objections (ROA 885) to the Jusuf Declaration were not material to the disposition of the motion. Plaintiff Marisela Mora to give notice. <u>Status Conference</u> The court has reviewed the parties’ joint status conference statement filed May 23, 2024 (ROA 914). The parties previously stipulated to strike the class claims in the first amended complaint against Diamond ZB Staffing Services, LLC. ROA 173 (at 1:22-24). Plaintiff has since filed a second amended complaint (ROA 785) that appears to allege class
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		claims against Diamond ZB (and Diamond ZB-affiliated defendants). The parties should be prepared to address the status of the class claims against Diamond ZB (and Diamond ZB-affiliated defendants). The parties should also be prepared to address the case schedule, including proposed dates for the class certification hearing (if necessary) and the trial. The court is aware that plaintiff and defendants Capital Logistics & Warehousing Group, Inc. and JCR Services, LLC have reached a settlement and that the motion for preliminary approval of that settlement is scheduled for hearing on July 23, 2024 at 2:00 p.m.
5	Morales v. Mastroianni Family Enterprises Ltd. 2022-01286355	<u>Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers, including the supplemental papers, filed in support of plaintiff's motion for preliminary approval of a class action and PAGA settlement. The court has the following questions and comments: <u>As to the Amended Settlement Stipulation and the notice:</u> 1. How will the Individual PAGA Payments be calculated? See 1/25/24 Order (ROA 68) No. 2 (settlement). In addition, the notice states that the Individual PAGA Payments will be allocated as civil penalties and not be subject to tax withholding. Notice at 3. Does the Amended Settlement Stipulation include that provision? 2. The "PAGA Released Claims" provision for Aggrieved Employees (Amended Settlement Agreement ¶ 22) remains overbroad. As stated in the court's January 25, 2024 order (ROA 68), the PAGA release should be limited to the civil penalties available under PAGA based on the facts alleged in the operative complaint and the notice letter(s) to the LWDA. See 1/25/24 Order (ROA 68) No. 5 (settlement). The notice should also be revised accordingly. 3. Paragraph 32 of the Amended Settlement Stipulation ("Response Deadline") should include disputes. See 1/25/24 Order (ROA 68) No. 6 (settlement). In addition, "of" after "Exclusion" in the first sentence of paragraph 32 should be "or." 4. In its January 25, 2024 order (ROA 68), the court instructed the parties to provide an itemized detail of the costs incurred to date and estimated future costs. The parties have not provided an itemized detail of future costs; the court is not inclined to award costs that have not been incurred. The Stout invoices attached to the Supplemental Kim Declaration (ROA 76, Ex. E) do not

		provide sufficient detail for the court to determine the work performed and who performed it. 5. Plaintiff's counsel should provide legal authority permitting an award of postage costs or remove them. See Supp. St. John Decl. (ROA 80) Ex. A. 6. Paragraph 14 of the Amended Settlement Stipulation and the notice should state that the judgment will be posted on the settlement administrator's website for at least 180 days. See 1/25/24 Order (ROA 68) No. 13 (notice). 7. The Amended Settlement Stipulation and the notice state the settlement administrator's fees shall not exceed \$18,900. The supplemental brief states the settlement administrator has agreed to a flat fee of \$12,750. Supp. Brief (ROA 78) at 5:6. If the settlement administrator's fee will be \$12,750, the notice should state that amount. 8. On page 1 of the notice, the first sentence in the box next to "Object" should be revised to state: "To object to the Settlement, you must submit a written statement stating you object to the settlement or state your objection in person at the Settlement Hearing." In the "Object to the Settlement" portion of the notice, the phrase "(2) state the grounds for the objection" should be removed. See 1/25/24 Order (ROA 68) No. 7 (notice). 9. In the "Object to the Settlement" section of the notice, the second-to-last sentence (beginning with "Any Class Member") should be removed. 10. In the "Request Exclusion from the Settlement" section of the notice, the notice should state that an Aggrieved Employee cannot request exclusion from the settlement with respect to the any PAGA claims. See 1/25/24 Order (ROA 68) No. 8 (notice). 11. The notice should include the date of the final approval hearing. See 1/25/24 Order (ROA 68) No. 12 (notice). 12. In the "How Can I Get Additional Information" section of the notice, the fourth sentence should state "Amended" Settlement Agreement. <u>As to the proposed order (ROA 70):</u> 13. The title and page 1 lines 1-2 should refer to the PAGA action as well as the class action. See 1/25/24 Order (ROA 68) No. 1 (proposed order). 14. The Amended Settlement Agreement and the class notice, the exclusion form, and the objection form (in all necessary languages) should be attached to the proposed order as exhibits. See 1/25/24 Order (ROA 68) Nos. 7, 8 (proposed order).
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		The hearing on plaintiff’s motion for preliminary approval is continued to <u>October 24, 2024 at 2:00 p.m.</u> in Department CX104 to enable the parties to address and respond to the above issues. A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement shall be submitted, rather than an “amended settlement agreement,” to streamline the court’s review of the documents. The parties shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order). Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended documents, and file a proof of service.
6	Nguyen v. Baxter Healthcare Corporation, et al. 2023-01358073	The hearing on this motion and the status conference are continued to May 31, 2024 at 10:00 a.m. in Department CX104 or via Zoom. <u>Defendants Kelly Services Global, LLC and Baxter Healthcare Corporation’s Motion to Compel Arbitration</u> Defendants Kelly Services Global, LLC (Kelly) and Baxter Healthcare Corporation (Baxter) move for an order compelling plaintiff David Nguyen to arbitrate his individual PAGA claims and staying the nonindividual PAGA claims pending completion of the arbitration. For the following reasons, defendants’ motion is granted. The right to arbitration depends upon contract; a petition to compel arbitration is simply a suit in equity seeking specific performance of that contract. <i>Little v. Pullman</i> (2013) 219 Cal.App.4th 558, 565. The petitioner bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. <i>Id.</i> <i>Unconscionability</i> Plaintiff does not dispute he electronically signed the arbitration agreement. Plaintiff also does not dispute defendants’ contentions that (i) the Federal Arbitration Act applies and (ii) the arbitration agreement applies to plaintiff’s claims against both defendants. Plaintiff argues the arbitration agreement is unconscionable. In <i>OTO, L.L.C. v. Kho</i> (2019) 8 Cal.5th 111, the California Supreme Court recognized that notwithstanding the strong public policy favoring arbitration, “generally applicable contract defenses, such as . . . unconscionability, may be applied to invalidate arbitration agreements without contravening” the FAA’ or California law.” <i>Id.</i> at 125; see <i>AT&T Mobility LLC v. Concepcion</i> (2011) 563 U.S. 333, 339.

		"Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. [Citation.] 'The term [contract of adhesion] signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it.' [Citation.] If the contract is adhesive, the court must then determine whether 'other factors are present which, under established legal rules—legislative or judicial—operate to render it [unenforceable].'" <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> (2000) 24 Cal.4th 83, 113. To declare an agreement unenforceable, a court must find both procedural and substantive unconscionability. Procedural unconscionability focuses on oppression or surprise due to unequal bargaining power; substantive unconscionability looks at overly harsh or one-sided results. <i>Baltazar v. Forever 21, Inc.</i> (2016) 62 Cal.4th 1237, 1243; <i>see also OTO</i>, 8 Cal.5th at 129-30. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." <i>Armendariz</i>, 24 Cal.4th at 114. Plaintiff bears the burden to demonstrate that the arbitration agreement is procedurally and substantively unconscionable. <i>Sanchez v. Carmax Auto Superstores California, LLC</i> (2014) 224 Cal.App.4th 398, 402. The arbitration agreement is a contract of adhesion. The arbitration agreement is a preprinted form agreement that is provided to all Kelly applicants "as part of the OB365 standard [onboarding] process." Ali Decl. (ROA 66) ¶¶ 5, 6, 19. The adhesive nature of the agreement is evidence of some degree of procedural unconscionability. <i>Sanchez</i>, 224 Cal.App.4th at 403. Plaintiff argues the agreement is procedurally unconscionable because plaintiff's primary language is Vietnamese and his English reading comprehension is limited, Kelly did not offer to meet with plaintiff telephonically or in person to discuss the onboarding documents, Kelly did not explain the documents to plaintiff or tell plaintiff he did not have to sign the arbitration agreement, plaintiff could not negotiate the terms of the arbitration agreement, and plaintiff felt he had to sign the agreement as a condition of employment. Directly above the signature lines, in bold print, the agreement states: "This Agreement is not mandatory for people who reside or work in California, and if I work or reside in California, I understand that the decision to sign this Agreement to Arbitrate is entirely my own, and that neither my hiring nor continued employment with Kelly is conditioned upon signing the Agreement to Arbitrate." ROA 91 (Ex. B, at 3) (bold in original). In Paragraph 1, the agreement states: "I understand that the decision to sign this Agreement to Arbitrate is entirely my own, and that neither my
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		hiring nor continued employment with Kelly is conditioned upon signing this Agreement to Arbitrate.” ROA 91 (Ex. B, ¶ 1). Plaintiff does not state that he did not understand the agreement or could not read it. The plain language of the agreement states that it is plaintiff’s decision whether to sign the agreement, and that signing the agreement is not a condition of employment. In addition, defendants have presented evidence that (i) before proceeding to the next form, a user must click a button to acknowledge that the user has reviewed and understood the form, (ii) California users, including plaintiff, had the option to decline the arbitration agreement and move to the next form without signing the arbitration agreement, and (iii) users could contact the Kelly employee who initiated the electronic onboarding process with questions about the forms. Ali Decl. (ROA 66) ¶¶ 8, 9, 13, 21. Beyond its adhesive nature, plaintiff has not demonstrated procedural unconscionability. Plaintiffs argues the agreement is substantively unconscionable because it contains a 300-day statute of limitations, a class and collective action waiver, and a confidentiality provision. As noted above, substantive unconscionability examines the fairness of a contract's terms to ensure that a contract of adhesion does not impose terms that are overly harsh, unduly oppressive, or unfairly one-sided. <i>OTO</i>, 8 Cal.5th at 129-30. The court focuses on terms that unreasonably favor the more powerful party, impair the integrity of the bargaining process, contravene public interest or policy, or attempt to impermissibly alter fundamental legal duties. This includes unreasonable or harsh terms or ones that undermine the nondrafting party's reasonable expectations. <i>Id.</i> at 130. The 300-day limitations provision in paragraph 6 of the agreement is substantively unconscionable because it unreasonably shortens the statute of limitations period. See <i>Beco v. Fast Auto Loans, Inc.</i> (2022) 86 Cal.App.5th 292, 310 (unreasonably short limitations period was unenforceable); <i>Ellis v. U.S. Security Assocs.</i> (2014) 224 Cal.App.4th 1213, 1225 (shortened limitations period was unconscionable); <i>Martinez v. Master Protection Corp.</i> (2004) 118 Cal.App.4th 107, 117 (arbitration provision containing six-month statute of limitations for all claims was unconscionable). As discussed below, the court exercises its discretion to sever the 300-day limitations period in paragraph 6. Plaintiff argues the class and collective action waiver in paragraph 8 of the agreement is unconscionable because it constitutes a “wholesale PAGA waiver.” As explained in <i>Piplack v. In-N-Out Burger</i> (2023) 88 Cal. App. 5th 1281, after <i>Viking River Cruises, Inc. v. Moriana</i> (2022) 142 S. Ct. 1906, “every PAGA action is properly understood as a combination of two claims: an ‘individual’ claim, arising from the Labor Code violations suffered by the plaintiff or plaintiffs themselves, and a
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		'representative' claim, arising from violations suffered by other employees. By virtue of FAA preemption, these claims are severable from one another, and the 'individual' claim is arbitrable, even if the state, which holds a 75 percent interest in any civil penalties recovered, does not consent to or participate in the arbitration. Thus, the individual claim is 'individual' within the meaning of defendant's arbitration agreement, and only the 'representative' claim is a true qui tam, or 'private attorney general,' action. And the agreement makes clear, 'The . . . Private Attorney General Waiver . . . shall be severable in any case in which the dispute is filed as an individual action and severance is necessary to ensure that the individual action proceeds in arbitration.'" <i>Piplack</i>, 88 Cal.App.5th at 1288-89. Paragraph 18 of the arbitration agreement here permits the individual PAGA claims to be severed from the nonindividual PAGA claims: "Provided, however, that if all or part of the Waiver of Class and Collective Claims is found to be unenforceable, then any claim(s) brought on a class, collective or representative action basis must be filed in a court of competent jurisdiction, but any portion of the Waiver of Class and Collective Claims that is enforceable shall be enforced in arbitration." ROA 91 (Ex. B, ¶ 18); <i>see also Galarsa v. Dolgen Cal., LLC</i> (2023) 88 Cal. App. 5th 639, 650 (severing waiver that stated employee "may not assert any . . . representative action claims in any arbitration pursuant to the Agreement or in any other forum' as to all PAGA claims" and compelling plaintiff's individual claims to arbitration). Paragraph 18 allows arbitration of plaintiff's individual PAGA claims while plaintiff's nonindividual PAGA claims remain in court. Plaintiff argues the confidentiality provision in paragraph 7 of the agreement is unconscionable because it is not mutual and prevents plaintiff from conducting informal discovery. Paragraph 7 states: "All arbitration proceedings are confidential, unless applicable law provides otherwise. The arbitrator shall maintain the confidentiality of the arbitration to the extent the law permits, and the arbitrator shall have the authority to make appropriate rulings to safeguard that confidentiality." ROA 91 (Ex. B, ¶ 7). The confidentiality provision is mutual and does not prevent plaintiff from interviewing witnesses. It is not as broad as the confidentiality provision at issue in <i>Ramos v. Superior Court</i> (2018) 28 Cal.App.5th 1042. Moreover, if a specific discovery issue, informal or otherwise, arises in the arbitration, the arbitrator may address it. ROA 91 (Ex. B, ¶ 4); Defendants' Request for Judicial Notice Ex. B (at 14). <i>Severance</i> The arbitration agreement contains a severance clause. Paragraph 18 provides: "If any provision of this Agreement is determined to be unenforceable or in conflict with a mandatory provision of applicable law, it shall be construed to incorporate
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		any mandatory provision and/or the unenforceable or conflicting provision shall be automatically severed and the remainder of the Agreement shall not be affected.” In the context of severing unconscionable provisions from an arbitration agreement, “the strong legislative and judicial preference is to sever the offending term and enforce the balance of the agreement: Although ‘the statute appears to give a trial court some discretion as to whether to sever or restrict the unconscionable provision or whether to refuse to enforce the entire agreement[,], . . . it also appears to contemplate the latter course only when an agreement is “permeated” by unconscionability.’” <i>Roman v. Superior Court</i> (2009) 172 Cal.App.4th 1462, 1477-78. As discussed above, the 300-day limitation provision is substantively unconscionable. The court exercises its discretion to sever that provision. In addition, as discussed above, plaintiff’s nonindividual PAGA claims remain in court. The court does not find that unconscionability permeates the agreement, and thus exercises its discretion to enforce the balance of the agreement. <i>Plaintiff’s nonindividual PAGA claims are stayed</i> Defendants argue plaintiff’s nonindividual PAGA claims should be stayed pending completion of the arbitration of plaintiff’s individual PAGA claims. <i>Adolph v. Uber Technologies, Inc.</i> (2023) 14 Cal.5th 1104 does not require a stay of nonindividual PAGA claims pending arbitration of individual PAGA claims. The court has discretion, however, to stay a court action when an issue involved in the case is ordered to arbitration. <i>Adolph</i>, 14 Cal.5th at 1123-24. The court elects to exercise its discretion to stay the court action pending completion of the arbitration. That procedure avoids the possibility of, e.g., inconsistent determinations of whether plaintiff does or does not have standing under PAGA, i.e., whether plaintiff did or did not suffer a Labor Code violation during employment. Defendant Kelly Services Global, LLC’s Request for Judicial Notice of Exhibits B and E is granted. Defendant Kelly Services Global, LLC’s Request for Judicial Notice of Exhibits C and D, which are two superior court orders, is denied. Defendant appears to present Exhibits C and D not as judicially-noticeable court records, but rather as purportedly persuasive legal authority. See, e.g., Defendants’ Brief (ROA 77) at 14:17-20. Defendants’ Evidentiary Objections (ROA 93) to the Nguyen Declaration are overruled. The superior court action is stayed pending completion of the arbitration. The initial case management conference scheduled for May 30, 2024 is vacated. An ADR Review hearing is scheduled for <u>November 21, 2024 at 9:00 a.m.</u> in Department
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		CX104. The parties are ordered to file a joint ADR Review hearing statement at least five court days before the hearing. Defendants to give notice. <u>Status Conference</u> The court has reviewed the parties' joint initial case management conference statement filed May 22, 2024 (ROA 95). In a concurrently-issued order, the court granted defendants Kelly Services Global, LLC and Baxter Healthcare Corporation's motion to compel arbitration of plaintiff David Nguyen's individual PAGA claims and to stay plaintiff's nonindividual PAGA claims pending completion of the arbitration. An ADR Review hearing is scheduled for <u>November 21, 2024 at 9:00 a.m.</u> in Department CX104. The parties are ordered to file a joint ADR review hearing statement at least 5 court days before the hearing. Clerk to give notice.
7	Sanchez Martinez v. JR Steel Reinforcing Construction Services Inc., et al. 2016-00863159	<u>Plaintiffs William Sanchez Martinez and William Schupp's Motion for Attorneys' Fees</u> No tentative ruling will be posted for this motion. <u>Defendants JR Steel Reinforcing Construction Services, Inc., Jeffrey Rauch and Becky Rauch's Motion to Strike or Tax Costs</u> Defendants JR Steel Reinforcing Construction Services, Inc., Jeffrey Rauch and Becky Rauch move to strike or tax costs claimed by plaintiffs William Sanchez Martinez and William Schupp. For the following reasons, defendants' motion is granted in part and denied in part. Following a bench trial, the court (Judge Peter Wilson) entered judgment in favor of plaintiffs and against defendants on August 18, 2023 judgment (ROA 1445). The court awarded plaintiffs and the aggrieved employees \$316,850 in PAGA civil penalties and \$150,027 in restitution. Plaintiffs thereafter filed a costs memorandum seeking \$188,002.61 in costs (ROA 1454). A prevailing party is usually entitled as a matter of right to recover costs in any action or proceeding. Cal. Civ. Proc. Code § 1032(b). If the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. <i>Foothill-De Anza Comm. College Dist. v. Emerich</i> (2007) 158 Cal.App.4th 11, 29; <i>Wagner Farms, Inc. v. Modesto Irrigation Dist.</i> (2006) 145 Cal.App.4th 765, 773-74. The party challenging costs does not meet this burden by arguing that the costs were not necessary or reasonable, but must present evidence and prove that the costs are not recoverable. <i>Seever v. Copley Press, Inc.</i> (2006) 141 Cal.App.4th 1550, 1557; see

		<i>also Wagner Farms</i>, 145 Cal.App.4th at 777-78. If the claimed items are not expressly allowed by statute and are objected to by a motion to strike or tax costs, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29. Whether a cost item was reasonably necessary to the litigation is a question of fact for the court to determine. <i>Id.</i> at 29-30. Defendants dispute various items in plaintiffs' costs memorandum. The court addresses each disputed item in turn below. 1. <i>Filing and motion fees (Item No. 1)</i> Plaintiffs seek \$8,910.97 in filing and motion fees. Costs Memo. (ROA 1454) Item No. 1 & Att. 1(g). Filing and motion fees are allowable costs under Civil Procedure Code section 1033.5(a)(1). Defendants argue plaintiffs' costs memorandum and attachment do not sufficiently identify whether the claimed filing and motion fees relate to the PAGA action or to the individual FEHA action. Defendants also argue plaintiffs did not provide any supporting documentation for the total amount. As stated above, if the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29; <i>Wagner Farms</i>, 145 Cal.App.4th at 773-74. The party challenging costs does not meet this burden by arguing that the costs were not necessary or reasonable, but must present evidence and prove that the costs are not recoverable. <i>Seever</i>, 141 Cal.App.4th at 1557; <i>see also Wagner Farms</i>, 145 Cal.App.4th at 777-78. Defendants have not presented any evidence demonstrating that the claimed filing and motion fees are not recoverable. Defendants' motion to strike or tax \$8,910.97 in filing and motion fees is denied. 2. <i>Jury fees (Item No. 2)</i> Plaintiffs seek \$176 in jury fees. Costs Memo. (ROA 1454) Item No. 2 & Att. 1(g). Jury fees are allowable costs under section 1033.5(a)(1). Defendants argue plaintiffs cannot recover jury fees because no jury trial ultimately took place. As plaintiffs note, nonrefundable jury fees are due on or before "the date scheduled for the initial case management conference in the action" (Civ. Proc. Code § 631(b), (c)), which in this case was before it became apparent no jury trial would occur. Defendants' motion to strike or tax \$176 in jury fees is denied. 3. <i>Deposition costs (Item No. 4)</i> Plaintiffs seek \$17,866.66 in deposition costs. Costs Memo. (ROA 1454) Item No. 4 & Att. 4(e). The following deposition
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		costs are allowable costs under section 1033.5(a)(3): (i) taking, video recording, and transcribing necessary depositions, including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed; (ii) fees of a certified or registered interpreter for the deposition of a party or witness who does not proficiently speak or understand the English language; and (iii) travel expenses to attend depositions. Civ. Proc. Code § 1033.5(a)(3). Defendants argue plaintiffs' costs memorandum and attachment do not sufficiently identify whether three deposition charges dated October 5, 2018, October 9, 2018 and October 11, 2018 relate to the PAGA action or to the individual FEHA action. Defendants also argue plaintiffs did not provide any supporting documentation for the total amount, and that plaintiffs deposed defendants several times "for the same issues." Motion (ROA 1472) at 4:9-10. As stated above, if the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29; <i>Wagner Farms</i>, 145 Cal.App.4th at 773-74. The party challenging costs does not meet this burden by arguing that the costs were not necessary or reasonable, but must present evidence and prove that the costs are not recoverable. <i>Seever</i>, 141 Cal.App.4th at 1557; <i>see also Wagner Farms</i>, 145 Cal.App.4th at 777-78. Defendants have not presented any persuasive evidence demonstrating that the deposition fees are not recoverable or substantiating their apparent argument that the depositions were not necessary. Moreover, Attachment 4(e) states that the listed charges dated October 5, 2018, October 9, 2018 and October 11, 2018 pertain to depositions of defendants Jeff Rauch and Becky Rauch. Defendants' motion to strike or tax \$17,866.66 in deposition costs is denied. 4. <i>Service of process costs (Item No. 5)</i> Plaintiffs seek \$1,283.80 in service of process costs. Costs Memo. (ROA 1454) Item No. 5 & Att. 5(d). Service of process costs are allowable costs under section 1033.5(a)(4). Defendants argue that "[i]t is not clear" whether two October 26, 2018 service of process charges (\$88.10 and \$109.10) relate to the PAGA action or to the individual FEHA action. Plaintiffs agree in their reply (Reply (ROA 1498) at 7:5-6) that these two charges should be removed from the costs memorandum. Based on plaintiffs' concession, the service of process costs should be reduced by \$197.20. Defendants also argue plaintiffs did not provide any supporting documentation for the total amount of service of process costs, and further assert "it still begs the question" whether the service of process charges were necessary.
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		As stated above, if the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29; <i>Wagner Farms</i>, 145 Cal.App.4th at 773-74. The party challenging costs does not meet this burden by arguing that the costs were not necessary or reasonable, but must present evidence and prove that the costs are not recoverable. <i>Seever</i>, 141 Cal.App.4th at 1557; <i>see also Wagner Farms</i>, 145 Cal.App.4th at 777-78. Defendants have not presented any persuasive evidence demonstrating that the service of process costs (less \$197.20 as discussed above) are not recoverable or substantiating their argument that the service of process costs were not necessary. Defendants' motion to strike or tax \$1,086.60 (\$1,283.80-\$197.20=\$1,086.60) in service of process costs is denied. 5. <i>Witness fees (Item No. 8)</i> Plaintiffs seek \$133,137.65 in witness fees. Costs Memo. (ROA 1454) Item No. 8 & Att. 8(b)(5). Attachment 8(b)(5) to plaintiffs' costs memorandum states that all of the witness fees sought are expert fees. Costs Memo. (ROA 1454) Att. 8(b)(5). Defendants argue plaintiffs did not provide any supporting documentation for the total amount of expert witness fees and that the court found plaintiffs' expert William Roberts's testimony only "slightly helpful." Defendants also argue they should not be required to pay \$4,613.65 for Roberts's questionnaire which the court found "inherently unreliable." Tentative Decision (3/13/23, ROA 1397 at 10:17-18). Fees of expert witnesses ordered by the court are allowable costs under section 1033.5(a)(8). None of the expert fees plaintiffs seek are for experts ordered by the court. If a plaintiff makes an offer to compromise pursuant to section 998 that is not accepted by the defendant and the defendant fails to obtain a more favorable judgment or award, the court, in its discretion, may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or during trial, of the case by the plaintiff, in addition to the plaintiff's costs. Civ. Proc. Code § 998(d). Plaintiffs served defendants with a section 998 offer in the amount of \$250,000 on December 3, 2021. Denis Reply Decl. (ROA 1500) Ex. A. Defendants did not obtain a more favorable judgment or award, as the court awarded plaintiffs and the aggrieved employees \$316,850 in PAGA civil penalties and \$150,027 in restitution. Accordingly, in its discretion, the court may award plaintiffs a reasonable sum to cover postoffer expert witness costs that were actually incurred and reasonably necessary in either, or both, plaintiffs' preparation for trial or during trial.
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Plaintiffs, however, have not demonstrated that any of the expert fees identified on Attachment 8(b)(5) were incurred after December 3, 2021. Nowhere in plaintiffs' costs memorandum, Attachment 8(b)(5) thereto, or in plaintiffs' opposition brief do plaintiffs provide any dates when plaintiffs incurred expert fees. The invoice attached as Exhibit B to the Denis Reply Declaration (ROA 1500), which counsel states "outline[s] all expert costs attendant with the above-entitled action" (Denis Reply Decl. ¶ 5 (*italics added*))), does not state who performed the work or what was done and does not state when the fees were incurred (as opposed to stating, e.g., the dates of rolling invoices). Nor have plaintiffs explained who the individuals, other than Roberts, whose names appear on Attachment 8(b)(5) are (i.e., Cordova, Ingersoll, Chasworth, Lange, Fish), or why their work was reasonably necessary to plaintiffs' preparation for trial or during trial. (In addition, the "total" reflected on Attachment 8(b)(5) is not the sum of the figures that appear in the "total" column in the chart.) As a result, the court has no evidence on which to conclude that any of the claimed expert witness fees were incurred after plaintiffs served the section 998 offer and/or were reasonably necessary to plaintiffs' preparation for trial or during trial. Defendants' motion to strike or tax \$133,137.65 in expert witness fees is granted.

6. Court reporter and transcript fees (Item No. 11)

Plaintiffs seek \$13,077.76 in court reporter and transcript fees. Costs Memo. (ROA 1454) Item No. 11 & Att. 12(c). Court reporter fees "as established by statute" are allowable costs under section 1033.5(a)(11). Fees for transcripts of court proceedings not ordered by the court are not. Civ. Proc. Code § 1033.5(b)(5). Defendants argue plaintiffs did not provide any supporting documentation for the total amount of court reporter and transcript fees and assert that defendants paid half of the court reporter fees for the PAGA trial. Plaintiffs state in their opposition (although not in a declaration) that the court reporter and transcript fees reflected on Attachment 12(c) include only plaintiffs' half of the court reporter and transcript fees for the trial.

As stated above, if the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. *Foothill-De Anza Comm. College Dist.*, 158 Cal.App.4th at 29; *Wagner Farms*, 145 Cal.App.4th at 773-74. The party challenging costs does not meet this burden by arguing that the costs were not necessary or reasonable, but must present evidence and prove that the costs are not recoverable. *See* *Seever*, 141 Cal.App.4th at 1557; *see also Wagner Farms*, 145 Cal.App.4th at 777-78. If a claimed cost item is not expressly allowed by statute and is objected to by a motion to strike or tax costs, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. *Foothill-De Anza Comm. College Dist.*, 158 Cal.App.4th at 29.

		Defendants have not presented any persuasive evidence demonstrating the court reporter fee in Attachment 12(c) is not recoverable. Defendants' motion to strike or tax \$495.00 in court reporter fees is denied. Section 1033.5(b)(5) expressly states fees for transcripts of court proceedings not ordered by the court are not allowable. Defendants' motion to strike or tax \$12,582.76 (\$13,077.76-\$495.00=\$12,582.76) in transcript fees is granted. <i>7. Interpreter fees (Item No. 13)</i> Plaintiffs seek \$429.19 in interpreter fees. Costs Memo. (ROA 1454) Item No. 13 & Att. 13(c). Fees of a certified or registered interpreter for the deposition of a party or witness who does not proficiently speak or understand the English language are allowable costs under section 1033.5(a)(3)(B). Defendants argue plaintiffs did not provide any supporting documentation for the total amount of interpreter fees. As stated above, if the items on a verified memorandum of costs appear to be proper charges, the memorandum is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29; <i>Wagner Farms</i>, 145 Cal.App.4th at 773-74. The party challenging costs does not meet this burden by arguing that the costs were not necessary or reasonable, but must present evidence and prove that the costs are not recoverable. <i>Seever</i>, 141 Cal.App.4th at 1557; <i>see also Wagner Farms</i>, 145 Cal.App.4th at 777-78. Defendants have not presented any persuasive evidence demonstrating that the interpreter fees are not recoverable. Defendants' motion to strike or tax \$429.19 in interpreter fees is denied. <i>8. Other fees (Item No. 16)—Mediation</i> Under "other" fees, plaintiffs seek \$2,945.00 in mediation fees. Costs Memo. (ROA 1454) Item No. 16 & Att. 16(a). Defendants argue mediation was not necessary to prosecute the action. Mediation costs are not listed among the costs that are expressly allowable or expressly not allowable. Code Civ. Proc. § 1033.5(a), (b). An item not specifically allowable under subdivision (a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation. <i>Berkeley Cement, Inc. v. Regents of Univ. of Cal.</i> (2019) 30 Cal.App.5th 1133, 1140. Mediation costs fall within the category of costs that may be awarded in the trial court's discretion. Civ. Proc. Code § 1033.5(c)(4). The question whether mediation fees should be awarded as costs in a particular matter must be
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		determined based on the facts and circumstances of the particular action. <i>Berkeley Cement</i>, 30 Cal.App.5th at 1143. The court finds that mediation in this case was reasonably necessary to the conduct of the litigation, including, most obviously, to the parties' efforts to resolve the matter short of trial. The fact that mediation did not succeed does not demonstrate that mediation was not reasonably necessary. Indeed, mediation is commonly utilized in PAGA actions and, if a settlement is achieved, the fact the settlement was reached via mediation is often reported to the court as a factor supporting approval of a PAGA settlement. Defendants' motion to strike or tax \$2,945.00 in mediation fees is denied. <i>9. Other fees (Item No. 16)—Investigations</i> Under "other" fees, plaintiffs seek \$2,651.00 in investigation fees. Costs Memo. (ROA 1454) Item No. 16 & Att. 16(a). Defendants argue investigation of defendants' assets was not necessary to prosecute the action. Investigation expenses in preparing a case for trial are not allowable costs under section 1033.5(b)(2). As stated above, if a claimed cost item is not expressly allowed by statute and is objected to by a motion to strike or tax costs, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29. Section 1033.5(b)(2) expressly states investigation costs are not allowable. Moreover, even if investigation costs were allowed, plaintiffs do not address this item in their opposition and thus have not demonstrated that the claimed investigation fees were reasonable and necessary. Defendants' motion to strike or tax \$2,651.00 in investigation fees is granted. <i>10. Other fees (Item No. 16)—Los Angeles Superior Court documents</i> Under "other" fees, plaintiffs seek \$27.20 for Los Angeles Superior Court documents. Costs Memo. (ROA 1454) Item No. 16 & Att. 16(a). Defendants argue these charges do not relate to this Orange County Superior Court case. As stated above, if a claimed cost item is not expressly allowed by statute and is objected to by a motion to strike or tax costs, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. <i>Foothill-De Anza Comm. College Dist.</i>, 158 Cal.App.4th at 29. Plaintiffs do not address these charges in their opposition and thus have not demonstrated that the claimed charges for Los Angeles Superior Court documents were reasonable and necessary. Defendants' motion to strike or tax \$27.20 for Los Angeles Superior Court documents is granted. <i>11. Other fees (Item No. 16)—Bankruptcy consultant</i>
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8	Slane v. Reef, Inc. 2022-01272718	<u>Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement</u> The court has reviewed and considered the papers, including the supplemental papers, filed in support of plaintiff’s motion for preliminary approval of a class action and PAGA settlement. The court has the following questions and comments: 1. In its November 2, 2023 order (ROA 117), the court inquired whether the definition of “Released Class Claims” should include an exclusion for the attorneys’ fees and costs sought in the settlement. See 11/2/23 Order (ROA 117) No. 2. The supplemental filings have not addressed this question. 2. Paragraphs 33 and 52 of the First Amendment to the Settlement Agreement conflict. See 11/2/23 Order (ROA 117) No. 8. <i>Compare</i> First Amendment to Settlement Agreement No. 6 (“The Response Deadline for Requests for Exclusion, Objections to the Settlement, or Workweek Disputes will be extended to seventy-five (75) calendar days for any Class Member who is remailed a Notice by the Settlement Administrator”) <i>with</i> First Amendment to Settlement Agreement No. 7 (“Those Class Members who receive a remailed Notice, whether by skip-trace or by request, will have between the late of

		(a) seventy-five (75) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, Objection to the Settlement or a Workweek Dispute.”). 3. The fourth sentence of paragraph 59 of the First Amendment to the Settlement Agreement (No. 9), after “heard by the court,” should include “regardless of whether the Class Member submitted a written objection.” See 11/2/23 Order (ROA 117) No. 10. 4. In its November 2, 2023 order (ROA 117), the court noted that paragraph 87 of the settlement agreement provides that in the event of an enforcement proceeding, the “successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys’ fees and costs, including expert witness fees incurred in connection with any enforcement actions.” The court stated that it would not enforce this provision against unnamed class members. See 11/2/23 Order (ROA 117) No. 14. This issue has not been addressed in the First Amendment to the Settlement Agreement. 5. The settlement agreement, any amendment(s) thereto, and the class notice (including a certified Spanish-language translation of the notice) should be attached to the proposed order as exhibits. See 11/2/23 Order (ROA 117) No. 27. The hearing on plaintiff’s motion for preliminary approval is continued to <u>October 24, 2024 at 2:00 p.m.</u> in Department CX104 to enable the parties to address and respond to the above issues. A supplemental brief shall be filed at least 9 court days before the hearing and shall address as necessary each of the above points. If required, an amendment to the settlement agreement shall be submitted, rather than an “amended settlement agreement,” to streamline the court’s review of the documents. The parties shall provide redlined copies of any revised documents (e.g., revised settlement agreement, revised notice, revised proposed order). Plaintiff is ordered to give notice, including to the LWDA, and to file a proof of service. Plaintiff must also serve the LWDA with any supplemental brief and any amended documents, and file a proof of service.
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