

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff David Fergonise
and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF IMPERIAL**
11

12 DAVID FERGONISE, on behalf of
13 himself and on behalf of all similarly
situated individuals,

14 Plaintiff,

15 v.

16 TRI-ROTOR, L.L.C., an Arizona limited
17 liability company, and DOES 1 through 10,
inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

CASE NO: ECU002469

*Assigned to the Honorable L. Brooks Anderholt,
Dept. 9*

CLASS ACTION

**[PROPOSED] ORDER (1) GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND (2)
GRANTING LEAVE TO FILE FIRST
AMENDED COMPLAINT**

DATE: March 1, 2023

TIME: 8: 30 a.m.

DEPT.: 9

Action Filed: July 7, 2022

1 Plaintiff David Fergonise's ("Plaintiff") Unopposed Motion for Preliminary Approval of
2 Class Action Settlement and for Leave to File First Amended Complaint came on for hearing before
3 this Court in Department 9, Judge L. Brooks Anderholt presiding, on March 1, 2023. The Court,
4 having considered the papers submitted in support of the motion and having heard oral argument
5 of the parties, **HEREBY ORDERS THE FOLLOWING:**

6 1. The Court grants preliminary approval of the settlement based upon the terms set
7 forth in the Settlement Agreement and Release of Claims ("Settlement") filed with the Court. The
8 settlement appears to be fair, adequate, and reasonable to the Class;

9 2. The Court finds that the settlement falls within the range of reasonableness and
10 appears to be presumptively valid, subject only to any objections that may be raised at the final
11 hearing;

12 3. The Court approves, as to form and content, the Notice of Pendency of Class Action
13 Settlement and Final Hearing ("Notice") and the Request for Exclusion ("Exclusion Form"), and
14 also approves the procedure for members of the Class to opt-out from or object to the Settlement,
15 as set forth in the Notice and Exclusion Form;

16 4. The Court directs the mailing of the Notice and Exclusion Form by first class mail
17 to the Class Members in accordance with the schedule set forth below. The Court finds that the
18 dates selected for the mailing and distribution of the Notice and Exclusion Form, as set forth herein,
19 meet the requirements of due process and provide the best notice practicable under the
20 circumstances and shall constitute due and sufficient notice to all persons entitled thereto;

21 5. It is ordered that the Settlement Class is preliminarily certified for settlement
22 purposes only. The Settlement Class is defined as follows: all non-exempt employees employed
23 by Defendant in California at any time between July 7, 2018 and January 14, 2023;

24 6. The Court approves and appoints Daniel F. Gaines and Alex P. Katofsky of Gaines
25 & Gaines, APLC as Class Counsel, and grants preliminary approval of an award of attorneys' fees
26 of up to 40% of the Gross Settlement Amount (or \$34,000) and documented litigation costs of up
27 to \$10,000 to Class Counsel, subject to final approval by the Court following a further motion by
28 Class Counsel;

7. The Court approves and appoints Plaintiff David Fergonise as the Class Representative and grants preliminary approval to a proposed Enhancement Payment in an amount not to exceed \$5,000;

8. The Court grants preliminary approval of the allocation of \$4,000 to penalties under the Private Attorneys General Act (Labor Code §§ 2698 et seq.), of which 75% (\$3,000) shall be paid to the LWDA and 25% (\$1,000) shall be paid to the Aggrieved Employees;

9. The Court hereby approves and appoints Phoenix Settlement Administrators as the Settlement Administrator and grants preliminary approval of the payment of fees and other charges of the Settlement Administrator in an amount not to exceed \$3,500;

10. The Court grants Plaintiff leave to file the First Amended Class and Representative Action Complaint attached as Exhibit 3 to the Settlement, within five (5) court days of the entry of this Order, and consents that Defendant is not required to file a responsive pleading thereto;

11. The Court orders the following schedule of dates for the specified actions/further proceedings:

<u>EVENT</u>	<u>TIMING</u>
Last day for Defendant shall provide to the Settlement Administrator a list of all Class Members, including their last known addresses, telephone numbers, social security numbers, and their dates of employment in a non-exempt position in California during the Class Period (“Settlement Class Information”)	20 calendar days after entry of Court’s Order granting preliminary approval of Settlement
Last day for Settlement Administrator to mail Notice and Exclusion Form to Class Members	30 calendar days after entry of Court’s Order granting preliminary approval of Settlement
Last day for Class Members to submit a written Exclusion Form to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Members to submit an Objection to the Settlement Administrator	45 calendar days after the initial mailing of the Class Notice to Class Members
Last day for Class Counsel to file and serve moving papers in support of final settlement approval and request for attorneys’ fees and costs	10 calendar days before the final settlement approval hearing date

<u>EVENT</u>	<u>TIMING</u>
Last day for Class Counsel to file with the Court and serve declaration by Settlement Administrator specifying the due diligence undertaken with regard to the mailing of the Notice	10 calendar days before the final settlement approval hearing date
Final settlement approval hearing	_____, 2023, at _____.m. (approximately 95 days after entry of this Order)

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT