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Attorneys for Plaintiffs, on behalf of themselves,
all others similarly situated, and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA**

FERNANDO RAMOS and KEVIN
NIKAIDO, individuals; all others
similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

DAVIDON HOMES a California limited
partnership; DAVIDON
CORPORATION; and
DOES 1-100, inclusive,

Defendants.

Case No. C23-01240

*[Assigned for All Purposes to the
Hon. Edward G. Weil, Dept. 39]*

**DECLARATION OF DAVID MARA, ESQ.,
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE**

Date:
Time:

Complaint Filed: May 24, 2023
Trial Date: None Set

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC, and counsel of record for the Plaintiffs and the
3 putative class in this matter. I am duly admitted to practice before all the courts of the state
4 of California. The following facts are within my personal knowledge and, if called to
5 testify, I could and would competently testify thereto.
- 6 2. I graduated from California Western School of Law and was admitted to practice law in
7 California in May 2004.
- 8 3. I extensively handle employment cases which involve violations of the California Labor
9 Code and Industrial Welfare Commission Wage Orders, such as wage and hour class actions
10 and cases alleging violations of the Private Attorneys General Act of 2004 (“PAGA”). I have
11 litigated over three hundred and fifty (350) class action and PAGA lawsuits over the course
12 of approximately 20 years.
- 13 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.* (San Diego County
14 Superior Court, Case No. GIC834348) which was the underlying case in the California
15 Supreme Court’s landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012)
16 53 Cal.4th 1004, in which the California Supreme Court delineated the scope of employer
17 obligations to provide, and employee rights to receive, meal and rest periods under
18 California law.
- 19 5. I am frequently called upon to author Amicus Curiae briefs on behalf of Consumer
20 Attorneys of California (“CAOC”). For example, I authored the Amicus Curiae briefs on
21 behalf of CAOC in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, (The
22 California Supreme Court ruling that, like meal periods, employers must relieve
23 employees of all duty and relinquish all control to satisfactorily discharge its obligation to
24 authorize and permit rest periods.); *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038 (The
25 California Supreme Court ruling that the time spent on the employer’s premises waiting
26 for, and undergoing, required exit searches of packages, bags, or personal technology
27 devices voluntarily brought to work is compensable hours worked within the meaning of
28

1 the Wage Orders.); *Oliver v. Superior Court* (2021) California Court of Appeal Case No.
2 H049185 (A brief asking the California Court of Appeal for the Sixth Appellate District
3 to determine whether mandatory drive time of personal vehicles should be considered
4 hours worked within the meaning of the Wage Orders' suffered or permitted test.).
5 *Davidson v. O'Reilly Auto Enterprises, LLC* (9th Cir., 2020; Docket No. 18-56188)(a brief
6 seeking Review *En Banc* of an order denying class certification in a wage and hour
7 matter).

8 6. I am also a member of CAOC's Amicus Committee that determines the cases in which
9 the organization will agree to provide amicus support.

10 7. I have also lectured as a panelist for California Employment Lawyers Association
11 regarding a host of wage and hour issues.

12 8. I have been named as class counsel in the following certified cases as a result of the court
13 granting a motion for class certification: *Mario Norona v. B&G Delivery System, Inc.*
14 (Sacramento County Superior Court, Case No. 34-2015-00186826-CU-OE-GDS); *Jerald*
15 *Schroeder v. YRC, Inc.; et al.* (Central District of California, Case No. 12-cv-01374-TJH);
16 *John Martin v. Sysco Corporation, et al.* (Eastern District of California, Case No. 1:16-
17 cv-00990-DAD-SAB); *William Smith v. Werner Enterprises, Inc. d/b/a C.L. Werner, Inc.*
18 (District of Nebraska, Case No. 8:15-cv-287); *Thomas Perez v. City of San Diego* (San
19 Diego County Superior Court, Case No. 37-2014-00016621-CU-OE-CTL); *Denson Sales,*
20 *et al. v. United Road Services, Inc. et al* (Northern District of California, Case No. 19-cv-
21 08404-JST), *Eric Mendez v. M&N Consulting, Inc. dba A-Line Messenger Service* (San
22 Bernardino County Superior Court, Case No. CIVDS1923624); *Denson Sales v.*
23 *Professional Auto Transport, Inc. et al.* (San Bernardino County Superior Court, Case No.
24 CIVDS2010153); *Bobby Williams v. Mohsen Transport, Inc.* (San Diego County Superior
25 Court, Case No. 37-2019-00063361-CU-OE-CTL); and *Ashton Harden v. Mushiana*
26 *Transport Inc.* (Sacramento County Superior Court, Case No. 34-2021-00301950-CU-
27 OE-GDS).

1 9. I have also been named as class counsel in numerous cases during the settlement process.
2 Here is a non-exhaustive list of cases where I have been named as class counsel in cases
3 during the settlement process: *Kenneth Cox v. 3PL Worx, et al.* (Yolo County Superior
4 Court, Case No. CV-18-100); *Brian Davidson v. A&B Trucking Services, Inc.* (Kern
5 County Superior Court Case No. BCV-16-102985); *Alex Vega, et al. v. Advance Beverage*
6 *Co., Inc.* (Kern County Superior Court, Case No. BCV-16-100848); *Jaime Ruiz v. Altura*
7 *Centers for Health* (Kern County Superior Court, Case No. BCV-19-101577); *George*
8 *Zamudio v. AmeriPride Service, Inc.* (Alameda County Superior Court, Case No.
9 RG1809666); *Richard Hendricks v. Antonini Freight Express, Inc.* (San Joaquin County
10 Superior Court, Case No. STK-CV-UOE-2016-6999); *Alton Davis v. Apria Healthcare*
11 *Group, Inc.* (San Diego County Superior Court, Case No. 37-2014-00004724-CU-OE-
12 CTL); *Alan Atchison v. Ashley Furniture Industries, Inc., et al.* (Central District of
13 California, Case No. 17-cv-00528-JAK-SP); *Bernard Payton v. Atech Logistics, Inc.*
14 (Sonoma County Superior Court, Case No. SCV 258595); *Ramon Jenkins v. Compass*
15 *Group USA, Inc., et al.* (Yolo County Superior Court, Case No. CVCV-18-747); *Timothy*
16 *Spikes, et al. v. Bear Trucking, Inc., et al.* (San Bernardino County Superior Court, Case
17 No. CIVDS1715151); *Joshua Turpen v. Benjamin's Transfer Inc.* (Solano County
18 Superior Court, Case No. FCS048845); *Cesar Mendoza v. Bi-Rite Food Service, Inc.* (San
19 Mateo County Superior Court, Case No. 17CIV02044); *Terrance Bailey v. Blue Apron,*
20 *LLC; et al.* (Northern District of California, Case No. 18-cv-07000-VC); *Jeffrey Weast v.*
21 *California Aseptic Beverages, LLC* (San Bernardino County Superior Court, Case No.
22 CIVDS1825256); *Michael Valentich v. Hub Construction Specialties, Inc.* (San
23 Bernardino County Superior Court, Case No. JCCPDS4893); *Jose De Jesus Ortega*
24 *Velazquez v. Hunter Landscape, Inc.; et al.* (San Bernardino County Superior Court, Case
25 No. CIVDS1928062); *Adrian Diaz v. Keystone Automotive Operations, Inc.* (Riverside
26 County Superior Court, Case No. RIC1817450); *Arturo Gonzalez v. NCI Group, Inc. dba*
27 *NCI Building Systems* (Eastern District of California, Case No. 18-cv-00948-AWI-SKO);
28

1 *Larry Perez v. The Nielsen Company (US), LLC* (Orange County Superior Court, Case
2 No. 30-2021-01194324-CU-OE-CXC); *Erik Martinez v. Patrick Industries, Inc.* (San
3 Bernardino County Superior Court, Case No. CIVDS2009663); *Randolph Fitch v. Shaw*
4 *Industries, Inc.; et al.* (San Bernardino County Superior Court, Case No.
5 CIVSB2024674); *Joshua Rael v. Intercontinental Hotels Group Resources, Inc.* (Los
6 Angeles County Superior Court, Case No. 19STCV16010); and *Aaron Romero v. Vitro*
7 *Flat Glass, LLC* (Kern County Superior Court, Case No. BCV-21-101357).

8 10. The Parties conducted significant investigation and discovery of the facts and law both
9 before and after this action was filed. Through informal discovery, Defendants produced
10 over 7,000 pages of documents. These included relevant policy documents that covered
11 employees' employment with Defendants, such as employee handbooks. Included within
12 these documents were Defendants' wage and hour policies, including their meal and rest
13 period policies. Defendants also produced a sampling of time and wage records for Class
14 Members. Plaintiffs also requested, and Defendants provided, the number of current and
15 former employees, as well as the number of workweeks worked by Class Members during
16 the relevant time period, to establish a potential exposure model in preparation for
17 mediation. From this discovery, Plaintiffs and their Counsel were able to analyze
18 Defendants' liability in this action and prepare a realistic damage model.

19 11. The Parties attended an all-day mediation presided over by respected wage and hour
20 mediator Jill R. Sperber on August 26, 2024. This meditation was successful. The Parties
21 then met and conferred over all the terms of the settlement and finalized their settlement
22 in the Parties' Agreement. The Parties' Agreement is attached hereto as **Exhibit 1**.

23 12. Plaintiffs allege that that for a portion of the class period employees are not provided with
24 lawful rest periods. Employers have an obligation to provide employees with ten (10)
25 minute rest periods. An employer's obligation to provide its employees with rest periods
26 arises under the Industrial Welfare Commission Wage Orders. Wage Order 5-2001,
27 Section 12(A) states, "[e]very employer shall authorize and permit all employees to take
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1 rest periods, which insofar as practicable shall be in the middle of each work period. The
2 authorized rest period time shall be based on the total hours worked daily at the rate of ten
3 (10) minutes net rest time per four (4) hours or major fraction thereof.”

4 13. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme
5 Court ruled that the standards applicable to providing meal periods the Court articulated
6 a few years earlier in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
7 were equally applicable to the rest period context. Citing *Brinker*, the *Augustus* Court
8 ruled that, like meal periods, “[d]uring required rest periods, employers must relieve their
9 employees of all duties and relinquish any control over how employees spend their break
10 time.” *Augustus*, 2 Cal.5th at 260. At a minimum, to relinquish employer control over how
11 employees spend their break time, the employee must be “free to leave the premises.”
12 *Brinker*, 53 Cal.4th at 1036. As the *Augustus* Court reasoned, the employee must be free
13 to travel five minutes away from the work site so that they can get back within the allotted
14 ten-minute time frame of the break. *Augustus*, 2 Cal.5th at 270. Plaintiffs contend that for
15 a portion of the class period, Defendants do not permit employees to leave the premises
16 during rest periods.

17 14. Defendants contend that they do not require employees to remain on the premises during
18 rest periods and have never required employees to remain on the premises. Defendants
19 argue that to resolve this claim, the factfinder would have to ask whether employees
20 thought they could leave the premises during rest breaks. In addition, Defendants contend
21 that employees did, in fact, leave the premises during rest periods. Defendants assert that
22 should litigation continue, it would present declarations from employees stating that they
23 were free to leave the premises, and did leave the premises, during rest periods.

24 15. Defendants also counter that even if it did tell employees they are to remain on the
25 premises, a point that Defendants do not concede, the practical limitations the ten (10)
26 minutes allotted for rest periods imposes on an employee’s movement are what prevent
27 employees from leaving the premises. In other words, the time limitation of only having
28

1 ten (10) minutes for rest periods prevents off-premises movement during rest periods, not
2 expressly or impliedly telling employees that rest periods are to be taken on the premises.
3 Based on the practical limitations associated with ten (10) minute rest periods, and not
4 Defendants' policies, Defendants contend its policies are aligned with, and not
5 antagonistic to *Augustus*. Defendants find support for this in the following language from
6 *Augustus*:

7 Because rest periods are 10-minutes in length (Wage Order 4, subd.
8 12(A)), they impose practical limitations on an employee's movement.
9 That is, during a rest period an employee generally can travel at most five
10 minutes from a particular work post before returning to make it back on
time. Thus, one would expect that employees will ordinarily have to remain
on site or nearby.

11 *Augustus, supra*, 2 Cal.5th at 270.

12 16. Defendants further assert that employees are relieved of all work and employer control
13 during rest periods. And, to the extent there is any limitation placed on rest periods, it is
14 something that arises solely out of the fact that ten (10) minutes is a short amount of time.
15 Therefore, Defendants assert that the limitations placed on employees, if any, are merely
16 inherent to rest periods and not an exertion of employer control.

17 17. Plaintiffs contend that Defendants do not provide employees with meal periods that
18 conform with California law for a portion of the class period. Employers have an
19 obligation under California law to provide employees with thirty (30) minute meal
20 periods. Under California Labor Code section 512(a), "[a]n employer may not employ an
21 employee for a work period of more than five hours per day without providing the
22 employee with a meal period of not less than 30 minutes" Cal. Lab. Code § 512(a).
23 An employer "satisfies this obligation [to provide meal periods] if it relieves its employees
24 of all duty, relinquishes control over their activities and permits them a reasonable
25 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage
26 them from doing so." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004,
27 1040. Here, Plaintiffs contend that Defendants did not provide duty-free meal periods for
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1 a portion of the class period because Plaintiffs assert that employees are always interrupted
2 during their meal periods by work related phone calls relating to tenant issues, new
3 tenants, vendors, or administrative issues from management.

4 18. Defendants assert that its meal period policy is and was at all times during the class period
5 lawful and that they have always provided employees with duty-free meal periods in
6 compliance with California law. Defendants contend that they informed employees that
7 they were relieved of all duties during meal periods and did not have to take phone calls
8 during breaks. Defendants contend that if litigation were to continue, the Court would
9 have to ask each employee whether they felt like they had to perform any work duties
10 during meal periods. Therefore, Defendants assert, that class certification is not proper as
11 individualized issues would predominate.

12 19. Employees must be paid for all “hours worked,” as that phrase is defined in the Wage
13 Order and interpreted by California courts. Hours worked is defined in Wage Order 5-
14 2001 --the Wage Order that governs the class members in this case- as “the time during
15 which an employee is subject to the control of an employer, and includes all the time the
16 employee is suffered or permitted to work, whether or not required to do so.” Wage Order
17 5-2001, Subd. 2(L); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th
18 833. Under this standard, “it is only necessary that the worker be subject to the control of
19 the employer in order to be entitled to compensation.” *Morillion v. Royal Packing Co.*
20 (2000) 22 Cal.4th 575, 584.

21 20. Here, Plaintiffs contend that Defendants fail to pay employees for all hours worked.
22 Plaintiffs allege that employees were not permitted to record more than eight (8) hours of
23 work per day. Plaintiffs contend that employees, however, would have to work additional
24 hours doing work related tasks such as tending to and resolving tenant issues, drafting
25 leases, finishing interviews with potential tenants and communicating with vendors.
26 Plaintiffs assert that because Defendants do not permit employees to record these hours,
27 Defendants do not pay employees for these hours.

1 21. Defendants contend that they inform employees that all hours must be recorded and that
2 they do not limit employees to recording only eight (8) hours per day. Defendants assert
3 that they have a policy that prohibits off the clock work. Defendants contend that they pay
4 employees for all hours worked, including hours worked over eight (8) in a day.
5 Defendants assert that if litigation were to continue, the Court would have to ask each
6 employee whether they recorded hours in excess of eight (8) in a day and, if not, why they
7 did not record all of their hours worked. Defendants contend that doing so would create
8 individualized issues that would defeat class certification.

9 22. Plaintiffs also pursued claims for failure to provide accurate itemized wage statements and
10 waiting time penalty claims. These claims are derivative of Plaintiffs' meal period, rest
11 period, and unpaid wages claims. Should Plaintiffs' meal period, rest period, and unpaid
12 wages claims fail, these claims would also fail.

13 23. In addition, Defendants contend that even if Plaintiffs were successful in their meal and
14 rest period and unpaid wages claims, they would have to prove Defendants "willfully"
15 failed to pay employees the appropriate wages due upon separation of employment. "A
16 willful failure to pay wages within the meaning of Labor Code Section 203 occurs when
17 an employer intentionally fails to pay wages to an employee when those wages are due.
18 However, a good faith dispute that any wages are due will preclude imposition of waiting
19 time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good faith dispute'
20 that any wages are due occurs when an employer presents a defense, based in law or fact,
21 which would preclude any recovery on the part of the employee. The fact that a defense
22 is ultimately unsuccessful will not preclude a finding that a good faith dispute did exist."
23 *Id.*

24 24. Defendants contend that any failure to pay meal period premiums, rest period premiums,
25 or additional wages was not willful. Defendants argue that it would not be liable for
26 waiting time penalties because a "good faith dispute" exists over the payment of those
27 premium wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008)

1 163 Cal.App.4th 1157, 1201. Further, Defendants contend that Plaintiffs would also have
2 to prove that Defendants “knowingly and intentionally” failed to comply with the wage
3 statement requirements under Labor Code § 226. *See Naranjo v. Spectrum Security*
4 *Services, Inc.* (2024) 15 Cal.5th 1056. Defendants maintain that they reasonably, and in
5 good faith believe that they were providing a complete and accurate wage statement in
6 compliance with California law.

7 25. Defendants also argue that Plaintiffs’ meal period, rest period, and unpaid wages claims
8 cannot form the basis of their wage statement claim. Defendants rely on the case
9 *Maldonado v. Epsilon Plastics, Inc.* (2018) 22 Cal.App.5th 1308, for the position that
10 employees do not suffer injury under California Labor Code § 226(a) so long as the wage
11 statements correctly reflected the hours worked and the pay received even if the pay is
12 later determined to be inaccurate.

13 26. Plaintiffs also seek PAGA penalties for the claims outlined above. PAGA allows the
14 private enforcement of certain California Labor Code sections relating to wage and hour
15 violations. The statute of limitations for PAGA violations goes back one year. Because
16 Plaintiffs’ PAGA claims are based on the same alleged unlawful conduct as their class
17 claims, Plaintiffs’ PAGA claims are subject to the same risks on the merits as Plaintiffs’
18 class claims.

19 27. In addition, Defendants maintain that Plaintiffs’ PAGA claims face manageability
20 concerns consistent with the class certification challenges. Specifically, Defendants have
21 due process rights which would not permit Plaintiffs to attempt to generalize violations
22 from disparate anecdotal evidence. *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th
23 1.

24 28. In addition, the Court may reduce any PAGA penalties awarded under Section 2699,
25 subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties awarded to
26 the Aggrieved Employees – assuming liability is proven as to each of Plaintiffs’ claims –
27 is higher in this case where these same individuals may also be receiving money for the
28

1 same unlawful conduct under the class claims. *See Avila v. Cold Spring Granite Co.* (E.D.
2 Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142
3 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties
4 granted by the underlying Labor Code violations, *see, e.g.,* Cal. Lab. Code §§
5 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what
6 amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiffs recognize
7 that the potential PAGA penalties are highly uncertain.”). As such, the Court may likely
8 reduce any PAGA penalty amount awarded to the Aggrieved Employees.

9 29. The settlement encompasses approximately 15,507 workweeks. This equates to
10 approximately 62,028 shifts. Employees earned approximately \$31.38 per hour on
11 average.

12 30. Plaintiffs allege that Defendants failed to provide employees with rest periods in
13 accordance with California law for a portion of the class period. Plaintiffs contend that
14 employees are not permitted to leave the premises during rest periods. If Plaintiffs were
15 to prevail on this claim, Plaintiffs and the Class Members would be entitled to the
16 following potential damages: \$1,693,390. (53,964 affected shifts x \$31.38 = \$1,693,390).

17 31. In addition, Plaintiffs allege that Defendants failed to provide employees with duty-free
18 meal periods in accordance with California for a portion of the class period. If Plaintiffs
19 were to prevail on this claim, Plaintiffs and the Class Members would be entitled to the
20 following potential damages: \$757,513 (24,140 affected shifts x \$31.38 = \$757,513).

21 32. Further, Plaintiffs allege that Defendants failed to pay all wages owed to employees.
22 Plaintiffs allege that employees were only permitted to record eight (8) hours of work per
23 shift but worked hours in excess of this. Plaintiffs believe that employees are owed
24 approximately one hour of pay per workweek. If Plaintiffs were to prevail on this claim,
25 Plaintiffs and Class Members would be entitled to the following potential damages:
26 \$486,609 (15,507 workweeks x \$31.38 = \$486,609).

27 33. If Plaintiffs were to prevail on their meal period, rest period, or unpaid wages claims,
28

1 Plaintiffs may be entitled to penalties for inaccurate wage statements. If Plaintiffs were to
2 prevail on this claim, the damages would be \$456,950.¹

3 34. If Plaintiffs were to prevail on their meal period, rest period, or unpaid wages claims, they
4 and the Class Members may also be entitled to waiting time penalties. Plaintiffs calculate
5 the potential exposure under their waiting time penalties cause of action as \$1,574,020
6 (209 former employees x 30 days x 8 hours x \$31.38/hour = \$1,574,020).

7 35. Plaintiffs also seek PAGA penalties. PAGA allows the private enforcement of certain
8 California Labor Code sections relating to wage and hour violations. The statute of
9 limitations for PAGA violations go back one year. The potential damages under Plaintiffs'
10 PAGA claim are \$1,857,700.²

11 36. As Plaintiffs' PAGA claims are based on the same alleged unlawful conduct as their class
12 claims, Plaintiffs' PAGA claims are subject to the same risks on the merits as Plaintiffs'
13 class claims. In addition, the Court may reduce any PAGA penalties awarded under
14 Section 2699, subdivision (e)(2). The likelihood of the Court reducing the PAGA penalties
15 awarded to Plaintiffs and the PAGA Aggrieved Employees – assuming liability is proven
16 as to each of Plaintiffs' claims – is higher in this case where these same individuals may
17 also be receiving money for the same unlawful conduct under the class claims. *See Avila*
18 *v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-
19 SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least
20 partially duplicative of penalties granted by the underlying Labor Code violations, *see*,
21 *e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in
22 whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2),
23 Plaintiffs recognize that the potential PAGA penalties are highly uncertain.”). As such,

24
25 ¹ 45 initial violations x \$50 for an initial violation = \$2,250

26 4,547 subsequent violations x \$100 for a subsequent violation = \$454,700

\$2,250 + \$454,700 = \$456,950

27 ² \$100 x 4 PAGA violations (meal periods, rest periods, unpaid wages, and wage statements) x
28 4,592 pay periods = \$1,836,800 plus \$100 x 1 PAGA violation (waiting time penalties) x 209 pay
periods = \$20,900.

1 the Court may reduce any PAGA penalty amount awarded to Plaintiffs and the PAGA
2 Aggrieved Employees.

3 37. Thus, not taking into account any of Defendants' defenses or arguments, Plaintiffs
4 estimated that if they were successful in their core claims, Defendants' total exposure
5 would be approximately \$2,937,512 [\$1,693,390 (rest period exposure) + \$757,513 (meal
6 period exposure) + \$486,609 (unpaid wages exposure) = \$2,937,512]. If the fact finder
7 were to side with Defendants on these claims, Plaintiffs and Class Members would not be
8 entitled to any damages for wage statements, waiting time penalties, or PAGA penalties
9 that are derivative of and dependent on Plaintiffs prevailing on their meal period, rest
10 period, and unpaid wages claims. If Plaintiffs are successful in their unpaid wages, meal
11 period, or rest period claims, and are able to prove that Defendants' wage statement
12 violations were knowing and intentional and that the waiting time penalties violations
13 were willful, they may also be entitled to damages for wage statements and waiting time
14 penalties in the amount of \$2,030,970 [\$456,950 (wage statements) and \$1,574,020
15 (waiting time penalties) = \$2,030,970]. Plaintiffs and the Aggrieved Employees may also
16 be entitled to PAGA penalties in the amount of \$1,857,700, subject to Court reduction.

17 38. In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the
18 settlement amount of \$900,000 – with an average settlement share amount estimated at
19 \$2,368 – is a reasonable and fair settlement amount.

20 39. The preliminary approval motion and supporting documents were uploaded to the Labor
21 Workforce Development Agency. Attached hereto as **Exhibit 2** is a confirmation received
22 as a result of this upload.

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

25 **MARA LAW FIRM, PC**

26 Date: May 2, 2025

27 Signed: _____

28 David Mara, Esq.

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiffs Kevin Nikaido and Fernando Ramos on behalf of themselves and the Class (“Plaintiffs”) and Defendants Davidon Homes and Davidon Corporation (“Defendants”) (collectively Plaintiffs and Defendants are referred to in this Agreement as the “Parties”). This agreement is intended to settle the suits designated: *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and DOES 1-100 (C24-00721)*¹; *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and Davidon Corporation; and DOES 1-100 (C24-01530)*; and *Fernando Ramos v. Davidon Homes; Donald Chaiken; and DOES 1-100 (C23-01240)*.

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs:** The costs incurred by the Settlement Administrator, APEX, to administer this Settlement, which shall not exceed \$10,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Aggrieved Employees:** All Class Members who worked for Defendants Davidon Homes and Davidon Corporation at any time from March 6, 2022 to October 29, 2024.
4. **Amended Complaint:** Prior to Preliminary Approval, the Parties in the matter of *Fernando Ramos v. Davidon Homes; Donald Chaiken; and DOES 1-100 (C23-01240)* shall stipulate to amend the complaint to 1) add Kevin Nikaido as a named Plaintiff; 2) add David Mara and Jill Vecchi of Mara Law Firm, PC as class counsel; 3) and add class and PAGA claims against Defendants Davidon Homes and Davidon Corporation that are pled in the matters of *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and DOES 1-100 (C24-00721)*; *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and Davidon Corporation; and DOES 1-100 (C24-01530)*.

¹ This Settlement Agreement does not pertain to claims against Apartment Management Consultants LLC, which are not released through this settlement.

Upon receipt of a copy of the stamped Amended Complaint, Plaintiff Nikaido shall dismiss without prejudice the class and PAGA claims against Defendants Davidon Homes and Davidon Corporation only in the matters of *Kevin Nikaido v. Apartment Management Consultants LLC*; *Davidon Homes*; and *DOES 1-100 (C24-00721)*; *Kevin Nikaido v. Apartment Management Consultants LLC*; *Davidon Homes*; and *Davidon Corporation*; and *DOES 1-100 (C24-01530)*. Plaintiffs will seek settlement approval of this class/PAGA settlement in the Amended *Ramos* Action.

5. **Attorneys Fee Award:** The amount of attorneys' fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed one-third of the Gross Settlement Amount (\$300,000). The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
6. **Class:** All hourly, non-exempt employees who were employed by Defendants Davidon Homes and Davidon Corporation at any time during March 19, 2020, to October 29, 2024 within the State of California.
7. **Class Counsel:** David Mara and Jill Vecchi of Mara Law Firm, PC; Cristina Molteni of Molteni Employment Law; and Adrian Byrne of The Byrne Law Group.
8. **Class Data:** The electronic database Defendants shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendants' payroll, personnel, and other business records.
9. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.
10. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
11. **Class Period:** March 19, 2020, to October 29, 2024.
12. **Class Representatives:** Kevin Nikaido and Fernando Ramos.
13. **Class Representative Service Payments:** The amount the Court awards to the Class Representatives, Kevin Nikaido and Fernando Ramos, which will not exceed \$5,000 each. These payments shall be paid from the Gross Settlement Amount and are being offered in consideration for Plaintiffs executing a general release of claims against Defendants, a release that is broader than any

Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiffs' actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiffs put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

14. **Cost Award:** The amount that the Court orders Defendants to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$40,000. The Cost Award will be paid from the Gross Settlement Amount. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
15. **Counsel for Davidon Homes and Davidon Corporation:** Ann M. Wicks and Onesirosan L. Agbajoh of Withers Bergman LLP.
16. **Court:** Superior Court of California for the County of Contra Costa.
17. **Defendants:** Davidon Homes and Davidon Corporation.
18. **Disbursement of the Settlement:** Within ten (10) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Service Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
19. **Effective Final Settlement Date:** The effective date of this settlement will be the later of the time when either: (i) the Judgment of the Court granting final approval of the settlement is final and no longer subject to appeal, if there are objections, or (ii) the date the Court enters an order on final approval of the settlement, if there are no objections.
20. **Employer Taxes:** Defendants' portion of payroll taxes as the Class Members' current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendants will pay their portion of payroll taxes separate and apart from the Gross Settlement Amount.

21. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
22. **Funding of Settlement:** Defendants shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later forty-five (45) calendar days after the Effective Final Settlement Date.
23. **Gross Settlement Amount or GSA:** The total value of the settlement is a non-reversionary Nine Hundred Thousand dollars (“\$900,000”). This is the gross amount Defendants can be required to pay under this Settlement Agreement, with the exception of their obligation to pay Employer Taxes, or if the Escalator Provision is triggered. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys’ fees and costs, as approved by the Court; (3) the Class Representative Service Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. Defendants’ portion of payroll taxes as the Class Members’ current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants for any reason.
24. **Individual Class Settlement Share(s):** The portion of the Net Settlement Amount each Participating Class Member will receive under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.
25. **Individual PAGA Settlement Share(s):** Settlement Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendants during the Class Period.
26. **LWDA:** California Labor and Workforce Development Agency (“LWDA”). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiffs with regard to the claim in this Action through the procedural mechanisms provided for by statute.
27. **LWDA Payment:** Refers to the Seventy-five percent (75%) of the PAGA Payment of \$45,000 that is to be paid to the LWDA as described in this Settlement (*i.e.*, \$33,750).

28. **Net PAGA Settlement Amount or NPSA:** The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment (*i.e.*, \$11,250).
29. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Service Payments, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the portion of the settlement shares allocated as wages.
30. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
31. **PAGA Data:** The electronic database Defendants shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; (4) telephone number; and (5) the total number of pay periods during which the Aggrieved Employee performed work during the PAGA Period as an Aggrieved Employee. The PAGA Data shall be based on Defendants' payroll, personnel, and other business records.
32. **PAGA Payment:** Refers to the \$45,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$33,750, shall be paid to the LWDA. The remaining 25% of the \$45,000, or \$11,250, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
33. **PAGA Period:** March 6, 2022 to October 29, 2024.
34. **PAGA Settlement:** Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
35. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
36. **Parties:** Plaintiffs Kevin Nikaido and Fernando Ramos, as individuals and as Class Representatives, and Defendants Davidon Homes and Davidon Corporation.
37. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the Class Settlement.

38. **Released Class Claims**: All Participating Class Members will release and discharge the Released Parties from any and all claims pled in the operative complaint, or claims that could have been pled based on the factual allegations pled in the operative complaint. The Released Claims shall be for the Class Period.
39. **Released PAGA Claims**: Aggrieved Employees shall release Defendants and the Released Parties from any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act of 2004 pled in the operative Notices to the LWDA and the operative complaint. The PAGA Released Claims shall be for the PAGA Period.
40. **Released Parties**: Defendants and their past or present officers, directors, employees and agents which could be jointly liable with Defendants for the claims alleged.
41. **Response Deadline**: Forty-five (45) calendar days from the initial mailing of the Class Notices.
42. **Settlement Administration**: The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
43. **Settlement Administrator**: The third party administrator agreed upon by Parties to administer this Settlement is APEX.

II. **RECITALS**

44. Plaintiff Fernando Ramos submitted his Notice of Labor Code Violations to the LWDA on March 6, 2023.
45. On May 24, 2023, Plaintiff Fernando Ramos filed a class action and PAGA complaint in the Contra Costa County Superior Court against Davidon Homes and Donald Chaiken asserting the following causes of action: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Reimburse for Business Expenses; (6) Failure to Provide Itemized Accurate Wage Statement; (7) Continuing Wages Penalty; (8) Failure to Provide Employment Records; (9) Unfair Competition; (10) Private Attorneys

General Act of 2004; (11) Retaliation for Using Accrued Sick Days; and (12) Wrongful Termination in Violation of Public Policy. This case was designated with Case Number C23-01240.

46. A class action complaint was filed by Plaintiff Kevin Nikaido on March 19, 2024, Defendants Apartment Management Consultants, LLC; Davidon Homes; and Davidon Corporation in the Contra Costa County Superior Court (Case No. C24-00721). The complaint alleges the following causes of action against Defendant: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; (6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (7) Failure to Pay all Wages Due at the Time of Termination; and (8) Violation of Unfair Competition Law.
47. Plaintiff Kevin Nikaido submitted his Notice of Labor Code Violations to the LWDA on March 6, 2024.
48. On June 12, 2024, Plaintiff Kevin Nikaido filed a PAGA representative action complaint against Defendants Apartment Management Consultants, LLC; Davidon Homes; and Davidon Corporation in the Contra Costa County Superior Court (Case No. C24-01530). The complaint sought civil penalties under the PAGA in relation to the following alleged violations: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay all Wages Due at the Time of Termination; and (7) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy and Failure to Provide Written Notice Setting Forth Amount of Sick Leave Available.
49. The Parties attended a mediation with Jill R. Sperber on August 26, 2024.
50. Prior to mediation, Defendants produced documents relating to the challenged class-wide policies, along with a sampling of Class Member/Aggrieved Employee time and wage records.
51. At the mediation, the Parties were able to reach a settlement, which was reduced to a MOU.
52. **Benefits of Settlement to Class Members.** Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiffs and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel

have conducted extensive settlement negotiations. Based on the foregoing, Plaintiffs and Class Counsel believe the settlement set forth in this Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members, as it provides a definite, present sum of money.

- 53. Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Settlement Agreement to put to rest the Released Claims.
- 54. Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, make no concessions or admissions of liability of any sort, and contend that for any purpose other than settlement, the actions are not appropriate for class or representative treatment. Defendants assert a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Settlement Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Settlement Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiffs against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.
- 55. Plaintiffs' Claims.** Plaintiffs assert that Defendants' defenses are without merit. Neither this Settlement Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Settlement Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiffs, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the actions. However, in the event that this settlement is finally approved by the Court, the Plaintiffs, Participating Class Members, and Class Counsel will not oppose Defendants' efforts to use this Settlement Agreement to prove that Plaintiffs and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Settlement Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

- 56. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendants are obligated to pay under this Settlement Agreement is \$900,000. The Gross Settlement Amount includes, but is not limited to: (1) the Net Settlement

Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Service Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. Defendants' portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

56.1. Escalator Provision: At the time of mediation on August 26, 2024, Defendants represented that there are an estimated 16,080, workweeks worked by the Class Members during the Class Period. If the number of actual total workweeks worked by Class Members during the Class Period, as reported to the Settlement Administrator following preliminary approval, exceeds this amount by more than 10% (i.e., if there are 17,688 or more total workweeks), Defendants will either: (1) pay an additional sum necessary to increase the Gross Settlement Amount on a proportional basis (i.e., if there was a 15% increase in workweeks, Defendants would increase the Gross Settlement Amount by only 5%); or (2) elect to shorten the Class Period and PAGA Period (along with their associated releases) to a date that the total number of workweeks worked is at or under the 17,688, workweek threshold.

- 57. Class Certification.** Solely for the purposes of this settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this settlement to occur, the Court must certify the Class as defined in this Settlement Agreement.
- 58. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiffs and Class Members for purposes of this settlement only. If the settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this action or in any other lawsuit. If the settlement does not become effective, Defendants reserve the right to contest any issues relating to class certification and liability.
- 59. Appointment of Class Representatives.** Solely for the purposes of this settlement, the Parties stipulate and agree Plaintiffs Kevin Nikaido and Fernando Ramos shall be appointed as representatives for the Class.

60. **Appointment of Class Counsel.** Solely for the purpose of this settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
61. **Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

61.1 Calculation.

61.1.1 Individual Class Settlement Share Calculation.

Participating Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendants during the Class Period. The formula for distribution to Participating Class Members shall be calculated as follows: Defendants shall provide the Settlement Administrator with the total number of work weeks worked by all Class Members during the Class Period; the Settlement Administrator shall then divide the Net Payment by the total number of work weeks resulting in a value for each work week attributable to Class Members ("Work Week Value"); the Settlement Administrator shall then take the number of work weeks worked by each Class Member and multiply it by the Work Week Value.

- 61.2 Tax Withholdings.** Each Class Member's Individual Settlement Share will be apportioned as follows: 1/3 wages, 1/3 penalties, and 1/3 interest. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be paid from each Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

62. **Individual PAGA Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA

Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

62.1 Calculation.

62.1.1 Individual PAGA Settlement Share Calculation.

Aggrieved Employees will receive a pro-rated share of the Net Settlement Amount based on the number of pay periods they worked in California while employed by Defendants during the PAGA Period. The formula for distribution to Aggrieved Employees shall be calculated as follows: Defendants shall provide the Settlement Administrator with the total number of pay periods worked by all Aggrieved Employees during the PAGA Period; the Settlement Administrator shall then divide the Net PAGA Settlement Amount by the total number of pay periods resulting in a value for each pay period attributable to Aggrieved Employees (“Pay Period Value”); the Settlement Administrator shall then take the number of pay periods worked by each Aggrieved Employee and multiply it by the Pay Period Value.

62.2 Tax Withholdings. Each Aggrieved Employee’s Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees’ wages and shall be reported by IRS 1099 forms.

63. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Settlement Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

63.1 To the Named Plaintiffs: In addition to their Individual Settlement Shares, and subject to the Court’s approval, the named Plaintiffs, Kevin Nikaido and Fernando Ramos, will receive up to \$5,000 each in consideration for providing Defendants a General Release, a release that is broader than the claims released by Participating Class Members. The Settlement Administrator will pay the Class Representative Service Payments out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Service Payments. An IRS Form 1099 will be issued to Plaintiffs with respect to their Class Representative Service Payments.

- 63.2 To Class Counsel.** At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed one-third of the GSA (\$300,000) and a Cost Award not to exceed \$40,000. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 63.3 To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendants' portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendants' portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.
- 63.4 To the Settlement Administrator.** The Settlement Administrator – APEX – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$10,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- 63.5 To the LWDA and Aggrieved Employees.** The Settlement Administrator will pay \$33,750 of the PAGA Payment to the LWDA. This is 75% of the \$45,000 allocated to satisfy the PAGA penalties claim. The remaining 25% of the PAGA Payment (which equates to \$11,250) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees

63.6 To Participating Class Members. The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

64. Appointment of Settlement Administrator. Solely for the purposes of this Settlement, the Parties stipulate and agree that APEX shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiffs with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; and for such other tasks as outlined in this Agreement or upon which the Parties mutually agree. The Parties each represent that they do not have any financial interest in APEX or otherwise have a relationship with APEX that could create a conflict of interest.

65. Procedure for Approving Settlement.

65.1 Cooperation.

65.1.1 All Parties and their counsel shall support the settlement and take such steps as are reasonably necessary to effectuate the settlement.

65.2 Amended Complaint.

65.2.1 Prior to Preliminary Approval, the Parties in the matter of *Fernando Ramos v. Davidon Homes; Donald Chaiken; and DOES 1-100 (C23-01240)* shall stipulate to amend the complaint to 1) add

Kevin Nikaido as a named Plaintiff; 2) add David Mara and Jill Vecchi of Mara Law Firm, PC as Class Counsel; 3) and add class and PAGA claims that are pled in the matters of *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and DOES 1-100 (C24-00721); Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and Davidon Corporation; and DOES 1-100 (C24-01530)*. Upon receipt of a copy of the stamped Amended Complaint, Plaintiff Nikaido shall dismiss without prejudice the class and PAGA claims against Defendants Davidon Homes and Davidon Corporation only in the matters of *Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and DOES 1-100 (C24-00721); Kevin Nikaido v. Apartment Management Consultants LLC; Davidon Homes; and Davidon Corporation; and DOES 1-100 (C24-01530)*. Plaintiffs will seek settlement approval of this class/PAGA settlement in the Amended *Ramos* Action.

65.3 Motion for Preliminary Approval and Conditional Certification.

65.3.1 Plaintiffs will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.

65.3.2 At the same time that Plaintiffs file their Motion for Preliminary Approval, Plaintiffs shall send a copy of the Settlement Agreement to the LWDA pursuant to the 2016 amendments to PAGA.

65.3.3 At the Preliminary Approval hearing, Class Counsel will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representatives, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.

65.3.4 Effect of Denial of Preliminary Approval. Should the Court decline to conditionally certify the Class or

to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Service Payments shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Service Payments shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiffs' or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Service Payments.

65.4 Notice to Class Members and Aggrieved Employees. After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

65.4.1 Delivery of Class and PAGA Data. Within ten (10) calendar days after entry of the Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendants' payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class and PAGA

Data and all information contained within the Class and PAGA Data as private and confidential.

65.4.2 Preparation of Class Notices. Based on the information in the Class and PAGA Data and the formulae set forth herein, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.

65.4.3 Mailing of Class Notices. Within ten (10) calendar days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendants and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.

65.4.4 Returned Notices. If a Class Notice is returned because of an incorrect address, within five (5) calendar days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to

attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.

65.4.5 Weekly Status Reports. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants' Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.

65.4.6 Settlement Administrator's Declaration. No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

65.5 Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

65.5.1 Format. Any Objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal

Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

65.5.2 Notice of Intent to Appear. Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

65.6 Request for Exclusion from the Settlement (“Opt-Out”). The Class Notice will provide that Class Members who wish to exclude themselves from the settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s social security number or employee identification number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

65.6.1 Effect of “Opt-Out.” Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.

65.6.2 Confirmation of Authenticity. If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not

participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

65.6.3 Report. No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

65.7 Class Member and Aggrieved Employee Disputes. If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendants during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendants. Defendants shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendants' records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which

dates should be applied. The determination by the Settlement Administrator shall be final and binding.

65.8 No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the settlement, or appeal from the Judgment.

65.9 Motion for Final Approval.

65.9.1. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Service Payments; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

65.9.2. Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the settlement, or if the Court's Final Approval of the settlement is reversed or materially modified on appellate review, then this settlement will become null and void. If that occurs, the Parties will have no further obligations under the settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiffs and Class Counsel for the Class Representative Service Payments, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

65.9.3. Proposed Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing

jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

65.10 Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

65.11 Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

65.12 Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiffs, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

65.12.1. Funding the Settlement: Defendants shall wire or otherwise provide to the Settlement Administrator the Gross Settlement no later than forty-five (45) calendar days after the Effective Final Settlement Date.

65.12.2. Disbursement: Within ten (10) calendar days after the Defendants provide the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Service Payments paid to the Class Representatives, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendants' portion of payroll taxes as the Class Members' current or former employer.

65.12.3. Qualified Settlement Fund or QSF: The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

65.13 Settlement Administrator's Final Report. Within ten (10) days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

65.14 Uncashed Checks. Participating Class Members and Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

65.14.1Reminder Postcard. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

65.14.2 If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to the State of California's Unpaid Wage Fund, in the name of the Class Member. In such event, the class member who did not cash his or her check shall nevertheless remain bound by the settlement.

65.15 Defendants' Legal Fees. Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this action outside of the Gross Settlement Amount.

- 66. Release of Class Claims.** As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion shall release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.
- 67. Release of PAGA Claims.** As of the Effective Final Settlement Date, Aggrieved Employees shall release the Released Parties from the Released PAGA Claims. Aggrieved Employees agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released PAGA Claims.
- 68. Plaintiffs' Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Service Payments to the named Plaintiffs in an amount of \$5,000 each, Plaintiffs shall give the following general release of claims for themselves and their respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to their employment with Defendants or the remuneration for, or termination of, such employment. Plaintiffs' Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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.

This release excludes any release of any claims not permitted to be released by law.

Also, in consideration for providing Defendants with this complete, general release, Defendants agree to provide a neutral reference (dates of employment and last position held) in response to any inquiries by prospective employers of Plaintiffs.

69. Miscellaneous Terms

69.1 No Admission of Liability. Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the settlement is not approved. Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the action, or that but for the settlement, a Class should be certified in the action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This settlement and Plaintiffs' and Defendants' willingness to settle the action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this settlement).

69.2 No Effect on Employee Benefits. The Class Representative Service Payments and/or Individual Settlement Shares paid to Plaintiffs and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiffs or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Service Payments and/or Individual Settlement Share paid to Plaintiffs or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiffs' or Participating Class Members' and/or Aggrieved Employees'

previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any Class Representative Service Payments shall not be considered “compensation” in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.

- 69.3 Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 69.4 Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants’ Counsel warrant and represent that they are authorized by Plaintiffs and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 69.5 Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 69.6 Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the settlement, pending the Final Approval hearing to be conducted by the Court.

- 69.7 Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 69.8 Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 69.9 No Prior Assignment.** Plaintiffs hereby represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 69.10 Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 69.11 Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arm's-length negotiations, taking into account all relevant factors, current and potential.
- 69.12 No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.
- 69.13 Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting,

implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

69.14 Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

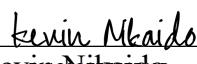
69.15 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

69.16 Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

DATED: 2/11/2025, 2025

DocuSigned by:

Kevin Nkaido

DATED: _____, 2025

Fernando Ramos

DATED: _____, 2025

Julie Chaiken, President
on behalf of Davidon Homes and
Davidon Corporation

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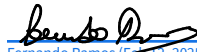
IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

DATED: _____, 2025

Kevin Nikaido

DATED: Feb 12, 2025, 2025



Fernando Ramos (Feb 12, 2025 13:19 PST)
Fernando Ramos

DATED: _____, 2025

Julie Chaiken, President
on behalf of Davidon Homes and
Davidon Corporation

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DATED: _____, 2025

Kevin Nikaido

DATED: _____, 2025

Fernando Ramos

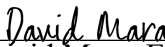
DATED: 2/14 _____, 2025

DocuSigned by:


6AA77F54D41040E
Julie Chaiken, President
on behalf of Davidon Homes and
Davidon Corporation

DATED: 2/11/2025, 2025

DocuSigned by:


David Mara, Esq.

Jill Vecchi, Esq.
MARA LAW FIRM, PC
Counsel for Plaintiff
Kevin Nikaido

DATED: _____, 2025

Cristina Molteni, Esq.
Adrian C. Byrne, Esq.
MOLTENI EMPLOYMENT LAW
BYRNE LAW GROUP
Counsel for Plaintiff
Fernando Ramos

DATED: _____, 2025

Ann M. Wicks, Esq.
Onesiroso L. Agbajoh, Esq.
WITHERS BERGMAN LLP
Counsel for Defendants
Davidon Homes and Davidon
Corporation

DATED: _____, 2025

David Mara, Esq.
Jill Vecchi, Esq.
MARA LAW FIRM, PC
Counsel for Plaintiff
Kevin Nikaido

DATED: Feb 17, 2025, 2025


Cristina Molteni (Feb 17, 2025 17:32 PST)
Cristina Molteni, Esq.
Adrian C. Byrne, Esq.
MOLTENI EMPLOYMENT LAW
BYRNE LAW GROUP
Counsel for Plaintiff
Fernando Ramos

DATED: _____, 2025

Ann M. Wicks, Esq.
Onesiroso L. Agbajoh, Esq.
WITHERS BERGMAN LLP
Counsel for Defendants
Davidon Homes and Davidon
Corporation

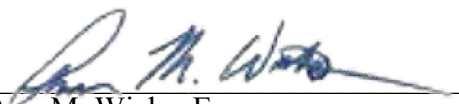
DATED: _____, 2025

David Mara, Esq.
Jill Vecchi, Esq.
MARA LAW FIRM, PC
Counsel for Plaintiff
Kevin Nikaido

DATED: _____, 2025

Cristina Molteni, Esq.
Adrian C. Byrne, Esq.
MOLTENI EMPLOYMENT LAW
BYRNE LAW GROUP
Counsel for Plaintiff
Fernando Ramos

DATED: February 14 _____, 2025



Ann M. Wicks, Esq.
Onesirosan L. Agbajoh, Esq.
WITHERS BERGMAN LLP
Counsel for Defendants
Davidon Homes and Davidon
Corporation

Exhibit *A*

CALIFORNIA SUPERIOR COURT, COUNTY OF CONTRA COSTA
*Fernando Ramos and Kevin Nikaido, on behalf of themselves, all others similarly situated, and on behalf of the
general public, Plaintiffs, v. Davidon Homes and Davidon Corporation, Defendants*
Case No. C23-01240 (“Complaint” or “Action”)

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don’t act.*

TO: All hourly, non-exempt employees who were employed by Davidon Homes and Davidon Corporation (hereinafter “Davidon” or “Defendants”) at any time during March 19, 2020, to October 29, 2024 within the State of California.

If you need help understanding this notice, or if you would like a copy in another language, please contact the Settlement Administrator toll free at [INSERT].

The California Superior Court, County of Contra Costa has granted preliminary approval to a proposed settlement (“Settlement”) of the above-captioned action. Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement (“Notice”) carefully.

The Court has certified the following class for settlement purposes (“Class” or “Class Members”):

All hourly, non-exempt employees who were employed by Defendants Davidon Homes and Davidon Corporation at any time during March 19, 2020, to October 29, 2024 within the State of California.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

The proposed Settlement has two main parts: (1) a class settlement requiring Davidon to fund Individual Class Settlement Shares, and (2) a PAGA settlement requiring Davidon to fund Individual PAGA Settlement Shares and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Davidon’s records, and the Parties’ current assumptions, **your Individual Class Settlement Share is estimated to be \$[INSERT] (less withholding) and your Individual PAGA Settlement Share is estimated to be \$[INSERT]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Davidon’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work any pay periods during the PAGA Period.

The above estimates are based on Davidon’s records showing that **you worked [INSERT] workweeks** during the Class Period (the Class Period is March 19, 2020, to October 29, 2024) and **you worked [INSERT] pay periods** during the PAGA Period (the PAGA Period is March 6, 2022 to October 29, 2024). If you believe that you worked more workweeks or pay periods during either period, you can submit a challenge by the deadline date. See Section 10 of this Notice.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?	Page 2
2. What Is This Case About?	Page 2
3. Am I A Class Member? Am I An Aggrieved Employee?	Page 3
4. How Does This Class Action Settlement Work?	Page 3
5. Who Are the Attorneys Representing the Parties?	Page 3
6. What Are My Options?	Page 4
7. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
8. How Do I Object to the Settlement?	Page 5
9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect to Receive From This Settlement?	Page 5
11. How Will the Attorneys for the Class and the Class Representatives Be Paid?	Page 7
12. What Do I Do If I Need More Information or Have Questions?	Page 7

1. Why Have I Received This Notice?

Davidon's records indicate that you may be a Class Member. The settlement will resolve all Class Members' Released Claims, as described in Section No. 9 below, from March 19, 2020, through October 29, 2024 (this time period is referred to as the "Class Period"). If you worked for Davidon at some time during the Class Period, you may be entitled to money under this settlement. This notice provides you with basic information about the case and advises you of your options with regard to the settlement.

A Preliminary Approval Hearing was held on **INSERT** at **INSERT**, in the California Superior Court, County of Contra Costa. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

2. What Is This Case About?

A class action complaint was filed by Fernando Ramos on May 24, 2023, in Contra Costa County Superior Court (Case No. C23-01240) asserting the following causes of action: (1) Failure to Pay Regular and Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Reimburse for Business Expenses; (6) Failure to Provide Itemized Accurate Wage Statement; (7) Continuing Wages Penalty; (8) Failure to Provide Employment Records; (9) Unfair Competition; (10) Private Attorneys General Act of 2004; (11) Retaliation for Using Accrued Sick Days; and (12) Wrongful Termination in Violation of Public Policy.

On April 2, 2025, Plaintiff Fernando Ramos filed a First Amended Complaint to add Plaintiff Kevin Nikaido, Defendant Davidon Corporation, and a cause of action for Defendants' failure to adopt a compliant sick pay/paid time off policy.

The Court has not made any determination as to whether the claims advanced by the Plaintiffs have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiffs or Defendants; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

Defendants expressly deny that they did anything wrong or that they violated the law and further deny any liability whatsoever to Plaintiffs or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you were an hourly, non-exempt employee who was employed by Defendants at any time during the period from March 19, 2020, through October 29, 2024 within the State of California.

If you are a Class Member and worked at least one pay period for Defendants in California at any time between March 6, 2022 through October 29, 2024, you are also an “Aggrieved Employee” under the settlement.

4. *How Does This Class Action Settlement Work?*

Plaintiffs brought this Action on behalf of themselves and all other similarly situated individuals who worked for Defendants as hourly, non-exempt employees in California at any time during the Class Period. Plaintiffs and these other individuals comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiffs and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. On [date of ruling on preliminary approval], the Court directed that you receive this notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2025 at [time a.m./p.m.], in Department 39 before Judge Edward G. Weil, located at 725 Court Street, Martinez, California 94553. The date of the Final Approval Hearing may change without further notice to the Class. You are advised to check the Court’s website (instructions on accessing this site are provided in Section 12 of this Notice) to confirm that the date has not been changed.

5. *Who Are the Attorneys Representing the Parties?*

Attorneys for Plaintiffs and the Class (“Class Counsel”)	Attorneys for Davidon
MARA LAW FIRM, PC David Mara dmara@maralawfirm.com Jill Vecchi jvecchi@maralawfirm.com 2650 Camino Del Rio North, Suite 302 San Diego, California 92108 Telephone: (619) 234-2833 MOLTENI EMPLOYMENT LAW Cristina Molteni cmolteni@moltenilaw.com 100 Pine Street, Suite 1250 San Francisco, California 94111 Telephone: (415) 762-0270	WITHERS BERGMAN LLP Ann M. Wicks Onesirosan Agbajoh 909 Montgomery Street, Suite 300 San Francisco, California 94133 Telephone: (415) 872-3200

THE BYRNE LAW GROUP Adrian Byrne adrian@thebyrnelawgroup.com 8605 Santa Monica Boulevard, Suite 48497 West Hollywood, California 90069 Telephone: (800) 805-4002	
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The Court has decided that Mara Law Firm, PC; Molteni Employment Law; and The Byrne Law Group are qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. *What Are My Options?*

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.
- **OBJECT:** You may assert a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

7. *How Do I Opt Out Or Exclude Myself From This Settlement?*

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [INSERT]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not opt out of the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt out of the settlement.

8. *How Do I Object To The Settlement?*

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than **[the Response Deadline]**. The objection must: (a) state your full name, address, and telephone number; (b) include the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval hearing.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, the objector will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendant and the Released Parties¹ from the Released Class Claims: All Participating Class Members will release and discharge the Released Parties from any and all claims pled in the operative complaint, or claims that could have been pled based on the factual allegations pled in the operative complaint. The Released Claims shall be for the Class Period.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include: Aggrieved Employees shall release Defendants and the Released Parties from any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act of 2004 pled in the operative Notices to the LWDA and the operative complaint. The PAGA Released Claims shall be for the PAGA Period.

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendants could be required to pay under this Agreement shall be up to but no more than \$900,000 (“Gross Settlement Amount” or “GSA”).

A. Deductions from the Settlement

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payments to each of the named Plaintiffs in an amount up to \$5,000 each (\$10,000 total) for prosecution of the Action, risks undertaken for the payment of attorneys’ fees and costs, and a broader release of claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$10,000; (3) a payment of \$45,000

¹ “Released Parties” mean Defendants and their past or present officers, directors, employees and agents which could be jointly liable with Defendants for the claims alleged.

allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$300,000 (one-third of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$40,000 for litigation costs. All of these payments are subject to court approval.

B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount will be proportionately distributed amongst all Class Members who have not opted out. These Class Members are referred to as "Participating Class Members." Participating Class Members will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of workweeks they worked in California while employed by Defendant during the Class Period. The formula for distribution to Participating Class Members shall be calculated as follows: Defendants shall provide the Settlement Administrator with the total number of work weeks worked by all Class Members during the Class Period; the Settlement Administrator shall then divide the Net Payment by the total number of work weeks resulting in a value for each work week attributable to Class Members ("Work Week Value"); the Settlement Administrator shall then take the number of work weeks worked by each Class Member and multiply it by the Work Week Value. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period.

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, the LWDA will receive a payment of \$37,500 (75% of the \$50,000 total PAGA Payment). The remaining \$12,500 is the "Net PAGA Settlement Amount" and will be proportionately distributed amongst all Aggrieved Employees. Aggrieved Employees will receive a pro-rated share of the Net Settlement Amount, less applicable withholdings, based on the number of pay periods they worked in California while employed by Defendant during the PAGA Period. The formula for distribution to Aggrieved Employees shall be calculated as follows: Defendants shall provide the Settlement Administrator with the total number of pay periods worked by all Aggrieved Employees during the PAGA Period; the Settlement Administrator shall then divide the Net PAGA Settlement Amount by the total number of pay periods resulting in a value for each pay period attributable to Aggrieved Employees ("Pay Period Value"); the Settlement Administrator shall then take the number of pay periods worked by each Aggrieved Employee and multiply it by the Pay Period Value. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he or she worked during the PAGA Period.

D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the period of March 19, 2020, to October 29, 2024.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] pay periods during the period of March 6, 2022 to October 29, 2024.

If you believe the number of workweeks attributed to you is incorrect, you must call the Settlement Administrator at [INSERT] no later than [RESPONSE DEADLINE] or mail documentation to the Settlement Administrator at [INSERT], that is postmarked no later than [RESPONSE DEADLINE]. You should produce

any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates you contend you worked for Messer during the Class or PAGA Period.

E. Tax Treatment of Your Settlement Payments

One-third of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendant's share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and paid by Defendants separately from the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual Class Settlement Share.

Two-thirds of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest and penalties/other payments. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

Please note that you must cash or deposit your settlement check within 180 calendar days after the check is mailed to you. If your check was lost or misplaced or you have changed your address, please contact the Settlement Administrator at [INSERT]. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed, shall escheat to the State of California's Unpaid Wage Fund in the name of the Class Member.

11. How Will the Attorneys for the Class and the Class Representatives Be Paid?

The attorneys for Plaintiffs and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiffs and the Class shall be paid an amount not to exceed one-third of the Gross Settlement Amount (\$300,000) for attorney fees and \$40,000 for litigation costs.

Defendants have paid all of her own attorneys' fees and costs.

Plaintiffs will also be paid, subject to Court approval, an amount not to exceed \$5,000, each, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a broader release of claims.

12. What do I do if I Need More Information or Have Questions?

This notice summarizes the proposed settlement. You can receive a copy of the settlement agreement by contacting Class Counsel, by accessing the Court docket in this case through the Court's website at <https://odyportal.cc-courts.org/Portal/Home/Dashboard/29> and entering the Case Number "C23-01240", or by visiting the office of the Court at 725 Court Street, Martinez, California 94553 between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding Court holidays. You may also ask Class Counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the “Davidon” Class Action Settlement when calling the Settlement Administrator or Class Counsel.

All inquiries by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to Class Counsel or the Settlement Administrator.

If you need this notice in Spanish or another language, or need help understanding it, please contact the Settlement Administrator or Class Counsel for assistance.

PLEASE DO NOT TELEPHONE THE COURT OR COURT’S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.

Exhibit 2