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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SALVADOR VELEZ, in his capacity as
the State of California's designated proxy
under the Private Attorneys General Act
and on behalf of others,

Plaintiffs,

v.

ESSEX PROPERTY TRUST, INC., a
Maryland corporation; and DOES 1
through 50 inclusive,

Defendants.

Case No. 37-2023-00020787-CU-OE-
CTL

JUDGE: HON. GREGORY W.
POLLACK DEPT. 71

**REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint filed: May 16, 2023

REPRESENTATIVE ACTION SETTLEMENT AGREEMENT AND RELEASE

This Representative Action Settlement Agreement and Release (“Settlement” or “Agreement”) is made and entered into by and between Defendant Essex Property Trust, Inc. (“Defendant”) and Plaintiff Salvador Velez (“Plaintiff”), on behalf of the State of California and other Aggrieved Employees as defined below (collectively with Defendant, the “Parties”). By executing this Agreement, the Parties intend to settle the lawsuit entitled *Velez v. Essex Property Trust, Inc.*, Superior Court of California for the County of San Diego, Case No. 37-2023-00020787-CU-OE-CTL, filed on May 16, 2023, involving claims brought under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.* (the “Action”).

1. DEFINITIONS

As used herein, for the purposes of this Agreement only, the following terms shall be defined as set forth below:

1.1 “**Aggrieved Employees**” means all current and former hourly paid or non-exempt employees who worked for Defendant within the State of California at any time during the PAGA Period.

1.2 “**Aggrieved Employee Settlement Amount**” means 25% of the PAGA Payment (as defined below).

1.3 “**Approval Order**” means the approval order issued and entered by the Court following a Motion For Approval Of The PAGA Settlement.

1.4 “**Attorneys’ Fees and Costs**” means the payment, as approved by the Court, to be made to Plaintiff’s Counsel (as defined below) in full satisfaction of all claims Plaintiff may have for reasonable attorneys’ fees, litigation costs, and expenses incurred in this Action. Attorneys’ Fees and Costs are to be taken from the Gross Settlement Amount (as defined below). The amount of attorneys’ fees awarded to Plaintiff’s Counsel may not exceed 33.33% of the Gross Settlement Amount, or \$239,976.

1 Defendant agrees not to contest the amount of Attorneys' Fees and Costs, provided that
2 they are consistent with the terms of this Agreement.

3 1.5 **"Court"** refers to the Superior Court of California for the County of San
4 Diego presiding over the Action.

5 1.6 **"Data List"** means a complete list of all Aggrieved Employees that
6 Defendant will diligently and in good faith compile from its records and provide to the
7 Settlement Administrator (as defined below) within 30 calendar days after the date of the
8 Approval Order. The Data List will be formatted in Microsoft Office Excel and will
9 include each individual's full name, last known mailing address and telephone number (if
10 available), Social Security number, number of workweeks or bi-weekly pay periods, and
11 all necessary information to prepare and calculate Individual Settlement Payments (as
12 defined below) to Aggrieved Employees. For purposes of this Agreement, the Data List
13 provided by Defendant shall be considered the official information to be used for this
14 Settlement.

15 1.7 **"Defense Counsel"** refers to Jon D. Meer, Leo Q. Li, and Michael A. Sigall
16 of Seyfarth Shaw LLP.

17 1.8 **"Effective Date"** means the date upon which all of the following have
18 occurred: date upon which both of the following have occurred: (i) approval of the
19 Settlement is granted by the Court overseeing the *Velez* Action, or other court assuming
20 jurisdiction of this matter, and (ii) the Court's Judgment approving the Settlement
21 becomes Final. "Final" shall mean the latest of: (i) if there is an appeal of the Court's
22 Judgment, the date on which the Judgment is affirmed on appeal, the date of dismissal of
23 such appeal, or the expiration of the time to file a petition for review to the California
24 Supreme Court and/or petition for writ of certiorari to the U.S. Supreme Court, or (ii) if a
25 petition for writ of certiorari is filed, the date of denial of the petition for writ of
26 certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no
27 appeal is filed, the expiration date of the time for filing or noticing any appeal of the
28 Judgment.

1 1.9 “**Enhancement Award**” means the amount to be paid to Plaintiff in
2 recognition of his effort and work in prosecuting the Action on behalf of the State of
3 California and the Aggrieved Employees, and for his general release of claims. Subject
4 to the Court’s approval, the Enhancement Award shall not exceed \$2,000.00. Defendant
5 will not oppose this request. The Court’s approval of the Enhancement Payment is not a
6 material term of the Settlement. Any amount not approved by the Court shall be
7 allocated to the PAGA Payment.

8 1.10 “**Figueroa Action**” refers to the related civil action against Defendant,
9 entitled “*Pedro Bracamonte Figueroa v. Essex Property Trust, Inc., et al.*,” Case No.
10 23STCV21273, pending in Los Angeles County Superior Court. The *Figueroa* Action
11 asserts identical claims against Defendant and seeks to recover civil penalties on behalf
12 of the State of California and Aggrieved Employees under PAGA (as defined below).

13 1.11 “**Individual Settlement Payments to Aggrieved Employees**” means the
14 individual payments that shall be made to each Aggrieved Employee, which in the
15 aggregate total the Aggrieved Employee Settlement Amount. Individual Settlement
16 Payments to Aggrieved Employees are taken from the Net Settlement Amount (as
17 defined below).

18 1.12 “**Judgment**” means a judgment entered by the Court that approves this
19 Settlement, incorporates by reference the terms and conditions of this Agreement, and
20 dismisses the Action with prejudice.

21 1.13 “**LWDA**” refers to the California Labor and Workforce Development
22 Agency.

23 1.14 “**LWDA Payment**” means 75% of the Net Settlement Amount (as defined
24 below), made to the LWDA.

25 1.15 “**Notice to Aggrieved Employees With Distribution of PAGA Payment**”
26 refers to the statement the Settlement Administrator (as defined below) will include with
27 the distribution of the Individual Settlement Payments to Aggrieved Employees. The
28 Notice to Aggrieved Employees With Distribution of PAGA Payment will state as

1 follows: “Essex Property Trust, Inc. has entered into a compromise and settlement with
2 the State of California in connection with claims brought under the Private Attorneys
3 General Act. As part of this compromise and settlement, the Court has ordered the
4 enclosed settlement check.”

5 1.16 “**PAGA**” refers to the Private Attorneys General Act of 2004.

6 1.17 “**Gross Settlement Amount**” (“GSA”) means the amount that the Parties
7 negotiated and agreed upon for the resolution of the Action and Released Claims, in an
8 amount not to exceed \$720,000.00. The GSA shall be inclusive of (i) the Attorneys’ Fees
9 and Costs; (ii) the Enhancement Payment; (iii) the Net Settlement Amount, and (iv) the
10 Settlement Administrator’s Expenses (as defined below). The GSA is a material term of
11 this Agreement and Defendant shall not be required to pay more than the GSA.

12 1.18 “**Net Settlement Amount**” (“NSA”) shall be the GSA minus the Attorneys’
13 Fees and Costs, the Enhancement Payment, and the Settlement Administrator’s Expenses.
14 The Net Settlement Amount shall be allocated as follows: 75% of the NSA (i.e., the
15 LWDA Payment) will be paid to the LWDA , and 25% of the NSA (i.e., the Aggrieved
16 Employee Settlement Amount) will be paid to the Aggrieved Employees based on the
17 number of bi-weekly pay periods worked during the PAGA Period (as defined below).

18 1.19 “**PAGA Period**” shall mean the time period from April 3, 2022 through
19 June 18, 2024 or through the filing date of Plaintiff’s Motion For Approval Of The
20 PAGA Settlement, whichever occurs earlier.

21 1.20 “**Pay Periods**” refers to the number of bi-weekly periods that each
22 Aggrieved Employee worked for Defendant during the PAGA Period in California.
23 Defendant’s employment records will be determinative for purposes of calculating the
24 Pay Periods and any payments under the Settlement. If an individual worked during any
25 day of the Pay Period, the Pay Period shall be included in their pro rata share of the
26 Aggrieved Employee Settlement Amount.

27 1.21 “**Plaintiff’s Counsel**” means the Law Office of Thomas D. Rutledge.
28

1 1.22 **“Qualified Settlement Fund”** means a fund established by the Settlement
2 Administrator pursuant to U.S. Treasury Regulation Section 468B-1.

3 1.23 **“Released PAGA Claims”** shall mean any and all claims that were asserted
4 or that could have been asserted based on the facts alleged in the operative Complaint of
5 the Action during the PAGA Period, including, but not limited to, California Labor Code
6 §§ 96(k), 98.6, 201-203, 203.1, 203.5, 204, 204.1, 204.2, 205, 205.5, 206, 206.5, 208,
7 209, 210, 212, 213(d), 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.2, 226.3, 226.6,
8 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, 232(c), 232.5(c),
9 233, 234, 245-251, 256, 351, 353, 403, 404(b), 432, 432.2, 432.3, 432.5, 432.7, 435, 450,
10 510-513, 516, 515, 551, 552, 558, 558.1, 601-604, 750, 751.8, 800, 850, 851, 851.5, 852,
11 921-923, 970, 973, 976, 1021, 1021.5, 1024.5, 1025, 1026, 1101, 1102, 1102.5, 1153,
12 1174, 1182.12, 1194, 1194.2, 1195, 1197, 1197.1, 1197.5, 1198 via applicable Wage
13 Order, 1198.3(b), 1198.5, 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5,
14 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392,
15 1683, 1695, 1695.5(a), 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,
16 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1775.5, 1811,
17 1815, 2441, 2651, 2673, 2673.1(a), 2695.2, 2751, 2800, 2801, 2802, 2806, 2810, 2810.5,
18 2929(b), 3073.6, 6310, 6311, 6399.7, 6400-6404, 6406-6407, 6409.6, 6432, California
19 Labor Code §§ 2698, *et seq.*, 1198, any applicable Wage Order of the California
20 Industrial Welfare Commission, California Code of Regulations, tit. 8, §§ 3395, 11000,
21 11040, 11070(14) any applicable requirement to provide suitable seating and/or stools,
22 and California Business and Professions Code §§ 17200-17508, and any remedies for any
23 of the claims described herein, including, penalties, restitution, declaratory relief,
24 equitable or injunctive relief, interest, and attorneys’ fees and costs. The Released PAGA
25 Claims shall be released by Plaintiff, the State of California, the LWDA, and all
26 Aggrieved Employees, without any option to submit any Request for Exclusion.

27 1.24 **“Released Parties”** shall mean Defendant, its former, present and future
28 owners, parents, subsidiaries and affiliates, and all of its current, former and future

1 officers, directors, members, shareholders, managers, human resources representatives,
2 employees, agents, principals, heirs, representatives, accountants, auditors, consultants,
3 insurers and reinsurers, and attorneys of the entities listed in this paragraph.

4 1.25 “**Settlement Administrator**” refers to Phoenix Class Action Settlement
5 Solutions.

6 1.26 “**Settlement Administrator’s Expenses**” refers to the costs payable from
7 the GSA to the Settlement Administrator for administering this Settlement, including, but
8 not limited to, printing, distributing, and tracking documents for this Agreement,
9 distributing the GSA, establishing a separate employer identification number and creating
10 a Qualified Settlement Fund (as defined below), and providing necessary reports and
11 declarations, as requested by the Parties. The Settlement Administration Costs are
12 currently estimated to be \$6,000.00. The Settlement Administrator shall use its own Tax
13 Payer Identification Number to issue to Aggrieved Employees Form-1099s for all
14 amounts paid under this settlement. The Settlement Administrator shall establish a
15 Qualified Settlement Fund account pursuant to Section 468B(g) of the Internal Revenue
16 Code for the purpose of administering the settlement, into which the GSA will be
17 deposited and calculate all settlement checks required under law based on information
18 that will be confidentially furnished by Defendant.

19 1.27 “**Swan Action**” refers to the related civil action against Defendant, entitled
20 “*Keino Swan v. Essex Property Trust, Inc., et al.*,” Case No. C23-02837, pending in
21 Contra Costa County Superior Court. The *Swan* Action asserts identical claims against
22 Defendant and seeks to recover civil penalties on behalf of the State of California and
23 Aggrieved Employees under PAGA (as defined below).

24 **2. RECITALS**

25 2.1.1 On April 3, 2023, Plaintiff submitted a PAGA Notice to the LWDA,
26 alleging various Labor Code violations and applicable Industrial Welfare Commission
27 Wage Order.
28

1 2.1.2 On May 16, 2023, before exhausting the statutory 65-day waiting
2 period, Plaintiff filed a PAGA representative action against Defendant in Superior Court
3 of California for the County of San Diego, entitled *Velez v. Essex Property Trust, Inc., et*
4 *al.*, Case No. 37-2023-00020787-CU-OE-CTL.

5 2.1.3 On July 20, 2023, Plaintiff filed a First Amended Complaint, alleging
6 that Plaintiff had exhausted the required 65-day waiting period.

7 2.1.4 On September 27, 2023, the Court issued an order staying the Action,
8 given that the Parties had agreed to participate in private mediation and exchange
9 informal discovery ahead of the private mediation.

10 2.1.5 On April 5, 2024, Plaintiff submitted an amended PAGA Notice to the
11 LWDA, alleging additional Labor Code violations and applicable Industrial Welfare
12 Commission Wage Order (*see* PAGA Released Claims).

13 2.1.6 As part of the informal discovery process, Defendant warrants and
14 represents that it provided Plaintiff with all of the relevant written policies and
15 procedures, an accurate list of all non-exempt hourly positions, descriptions of various
16 pay codes, random samples of time records and electronic pay records, and a random
17 collection of wage statements of certain employees selected by Plaintiff's Counsel.

18 2.1.7 Defendant warrants and represents that it also furnished Plaintiff with
19 accurate data points for the PAGA Period, showing the number of Aggrieved Employees
20 and the number of pay periods worked by Aggrieved Employees. Defendant also
21 provided numerous examples showing its calculations of the regular rate of pay for
22 purposes of overtime pay, meal and rest period premiums, and sick pay.

23 2.1.8 Plaintiff's Counsel represents he has thoroughly investigated
24 Plaintiff's claims against Defendant. Plaintiff's Counsel further represents he has
25 conducted a thorough investigation into the underlying facts, events, and issues related to
26 the subject matter of the Action, including the review of the records produced by
27 Defendant. In addition, Plaintiff's Counsel represents he has further undertaken an
28 extensive analysis of the legal principles applicable to the claims asserted against

1 Defendant, and the potential defenses thereto. All Parties have had ample opportunity to
2 evaluate their respective positions on the merits of the claims asserted.

3 **2.2 Private Mediation**

4 2.2.1 On April 10, 2024, the Parties attended a full-day mediation with Mr.
5 Steven Serratore, a highly-respected and experienced mediator in employment class and
6 representative action cases.

7 2.2.2 After a full-day mediation, the Parties reached a negotiated settlement.
8 The Parties executed a Memorandum of Understanding (“MOU”) on April 19, 2024
9 memorializing the principal terms of the settlement between the Parties.

10 2.2.3 The Parties have agreed to settle the Action for an amount not to
11 exceed \$720,000.00 (i.e., the Gross Settlement Amount). The entire Gross Settlement
12 Amount will be disbursed pursuant to the terms and conditions of this Agreement, and
13 none of it will revert to Defendant.

14 **2.3 The Settlement Is the Result of Arms’ Length Negotiations.** Based on
15 the foregoing investigation and evaluation, Plaintiff’s Counsel is of the opinion that the
16 terms set forth in this Agreement are fair, reasonable, adequate, and in the best interests
17 of the State of California and the Aggrieved Employees. The terms of the Settlement also
18 reflect an extensive exchange of information and data between the Parties, which allowed
19 Plaintiff’s Counsel to fully evaluate the potential risks in pursuing the underlying claims
20 on the merits. This Agreement was reached after extensive arm’s-length negotiations,
21 and it was negotiated in light of all known facts and circumstances, including the risks of
22 significant delay and uncertainty associated with litigation, the risk that the Action would
23 not be permitted to proceed on a representative basis, various defenses asserted by
24 Defendant, and numerous potential appellate issues. Plaintiff’s Counsel also evaluated
25 the interest of the Aggrieved Employees and the State of California in receiving a timely
26 settlement, rather than continued litigation in this Action or the related *Figueroa* Action
27 or *Swan* Action.
28

1 **2.4 The Parties' Intent.** It is the desire of the Parties to fully, finally, and
2 forever settle, compromise, and discharge any and all claims, rights, demands, charges,
3 complaints, obligations or liability of any and every kind that were or could have been
4 pled based on the factual allegations in the operative complaint in the Action arising
5 during the PAGA Period, including, but not limited to, the Released PAGA Claims. The
6 Parties also intend to effectuate the full scope of the Released PAGA Claims in this
7 Agreement.

8 **3. NON-ADMISSIONS OF LIABILITY**

9 **3.1** Defendant denies and continues to deny all of the allegations made by
10 Plaintiff in the Action, and denies and continues to deny that it is liable or owes any
11 damages, penalties or other compensation or remedies to anyone with respect to the
12 alleged facts or claims asserted in the Action. Defendant denies any liability or
13 wrongdoing of any kind in connection with Plaintiffs' claims, and contends that, during
14 all relevant times, it complied with all applicable California and federal law. Nonetheless,
15 without admitting or conceding any liability or damages whatsoever, and without
16 admitting that a representative action is appropriate except for settlement purposes alone,
17 Defendant has agreed to settle the Action on the terms and conditions set forth in this
18 Agreement, to avoid the burden, expense, and uncertainty of continuing with litigation.

19 **3.2** The Parties understand and agree this Agreement and any exhibits thereto
20 are settlement documents and shall be inadmissible for the purpose of showing liability
21 against Defendant or the Released Parties. However, the Parties agree that, to the extent
22 permitted by law, this Agreement may be pleaded as a full and complete defense to, and
23 may be used as the basis for an injunction against any action, suit, or other proceeding
24 that may be instituted, prosecuted, or attempted in breach of this Agreement.

25 **4. FINANCIAL TERMS OF THE SETTLEMENT**

26 **4.1 Gross Settlement Amount.** Subject to the terms and conditions of this
27 Agreement, Defendant shall pay the gross settlement amount not to exceed \$720,000.00,
28 which includes Attorneys' Fees and Costs, Enhancement Award to Plaintiff, Net

1 Settlement Amount, and Settlement Administrator's Expenses to Settlement
2 Administrator. The Gross Settlement Amount is a material term of the Agreement and
3 shall not be increased for any reason.

4 **4.2 Attorneys' Fees And Costs.** Plaintiff's Counsel will apply to the Court for
5 an award of Attorneys' Fees not to exceed 33.33% of the Gross Settlement Amount, or
6 \$239,976.00, and reasonable documented costs directly incurred for purposes of the
7 Action, as supported by declarations. Except as provided in this Agreement, Defendant
8 shall have no liability for any other attorneys' fees, costs or expenses in connection with
9 the Action.

10 4.2.1 Plaintiff's Counsel will be responsible for submitting all documents to
11 support their request for attorneys' fees, costs, and expenses in connection with the
12 Action. Defendant agrees not to oppose or object to Plaintiff's Counsel's request for
13 Attorneys' Fees and Costs if they are made in accordance with the terms of this
14 Agreement

15 4.2.2 The Court's approval of the Attorneys' Fees and Costs is not a
16 material term of the Agreement. Subject to paragraph 4.2.4, if the Court does not
17 approve or approves only a lesser amount than that requested by Plaintiff's Counsel for
18 Attorneys' Fees and Costs, the other terms of the Agreement shall still apply. The
19 Court's refusal to approve the Attorneys' Fees and Costs requested by Plaintiff's Counsel
20 does not give the Plaintiff, Aggrieved Employees, or Plaintiff's Counsel any basis to
21 abrogate the Agreement. Subject to paragraph 4.2.4, any amount of Attorneys' Fees and
22 Costs requested by Plaintiff's Counsel but unapproved by the Court shall be part of the
23 Net Settlement Amount.

24 4.2.3 Plaintiff's Counsel may elect to have the Settlement Administrator,
25 directly or indirectly, disburse all or part of his Court-approved attorneys' fees award
26 paid to him in periodic payments, through a structured settlement and/or to an assignee.
27 Plaintiff's Counsel will bear any and all costs, fees, and expenses of administration for
28 any periodic payments of such award and shall be fully responsible for any taxes, costs,

1 liabilities, attorneys' fees, and/or penalties resulting from any issues, claims, and/or
2 disputes arising out of, related to, or incurred in connection with any such periodic
3 payments, including without limitation, any such issues, claims, and/or disputes brought
4 by the state or federal government concerning the payment of taxes thereon. Plaintiff's
5 Counsel shall indemnify, defend, and hold Defendant and Defense Counsel harmless for
6 any and all taxes, costs, liabilities, attorneys' fees, and/or penalties resulting from any
7 issues, claims, and/or disputes arising out of, related to, or incurred in connection with
8 any such periodic payments.

9 4.2.4 To the extent the Court approves any award for attorneys' fees that
10 does not equal one third of the Gross Settlement Amount, Plaintiff's Counsel retains the
11 right to appeal the Court's award. Should Plaintiff's Counsel appeal the Court's award,
12 the difference between the amount awarded and the amount disputed on appeal shall be
13 retained by the Settlement Administrator pending Plaintiff's Counsel's appeal. After
14 resolution of any appeal, any funds not awarded to Plaintiff's Counsel then in possession
15 of the Settlement Administrator will be added to the Net Settlement Amount to be
16 distributed in accordance with the terms of the Agreement, and Plaintiff's Counsel shall
17 pay any additional costs incurred by the Settlement Administrator for this purpose. The
18 Attorneys' Fees and Costs are not a material term of the Agreement. If the Court reduces
19 the amount of Attorneys' Fees and Costs, all other terms of this Agreement shall remain
20 in effect.

21 **4.3 Enhancement Award.** Subject to the Court's approval, Defendant agrees to
22 pay an Enhancement Awards to Plaintiff, in an amount not to exceed \$2,000.00. The
23 Enhancement Award shall be paid from the Gross Settlement Amount, as an
24 enhancement for his services as the representative of the Aggrieved Employees and State
25 of California, and additional claims released by Plaintiff. The Enhancement Award shall
26 be in addition to any pro rata share of the PAGA Payment that Plaintiff may otherwise
27 receive under the Agreement.
28

1 4.3.1 Defendant will not oppose Plaintiff's request for the Enhancement
2 Award. Defendant will not deduct any payroll taxes from the Enhancement Award
3 because the Parties agree that the Enhancement Award is not considered to be payment of
4 wages. Plaintiff will be responsible for correctly characterizing this compensation for tax
5 purposes and for paying any taxes owing on said amount. Plaintiff shall indemnify and
6 hold harmless Defendant from any claim or liability for taxes, penalties, or interest
7 arising as a result of the payment of the Enhancement Award.

8 4.3.2 The Court's approval of the Enhancement Award is not a material
9 term of the Agreement. The Parties agree that a denial or reduction by the Court of the
10 requested Enhancement Award is not a basis for rendering the entire Agreement voidable
11 or unenforceable. Any reductions by the Court of the Enhancement Award shall be part
12 of the PAGA Payment.

13 **4.4 Settlement Administration Cost.** Subject to the Court's approval,
14 Defendant agrees to pay the Settlement Administrator the Settlement Administrator's
15 Expenses, currently estimated at \$6,255.00, for the administration of this Settlement. The
16 Settlement Administrator's Expenses shall be paid from the GSA. Any reduction by the
17 Court or any unused amount shall re-vert to the PAGA Payment. The Settlement
18 Administrator shall assist in all aspects of the settlement process for the Action,
19 including, but not limited to:

20 4.4.1 Establishing a separate employer identification number and a
21 Qualified Settlement Fund, tax reporting, making tax payments, providing required 1099
22 and W-2 forms;

23 4.4.2 Calculating and distributing Attorneys' Fees and Costs, Enhancement
24 Awards, Net Settlement Amount, including Aggrieved Employee Settlement Amount and
25 LWDA Payment, and Settlement Administration Cost;

26 4.4.3 Printing, distributing, tracking, sending, and resending of Notice to
27 Aggrieved Employees With Distribution of PAGA Payment pursuant to the terms of this
28 Agreement; and

1 4.4.4 Tracking and distributing any unclaimed Qualified Settlement Funds
2 to the California State Controller's Office pursuant to California's Unclaimed Property
3 Law.

4 **4.5 Net Settlement Amount.** After deducting (i) the court-approved Attorneys'
5 Fees And Costs, (ii) the court-approved Enhancement Award, and (iii) the court-
6 approved Settlement Administrator's Expenses, the remainder of the Gross Settlement
7 Amount is the Net Settlement Amount, which consists of the LWDA Payment and the
8 Aggrieved Employee Settlement Amount. For tax purposes, the Parties agree that the
9 PAGA Payment allocated to the Aggrieved Employees shall be considered penalties, for
10 which a Form 1099 will be issued to reflect these payments. Aggrieved Employees will
11 be responsible for paying any personal income taxes owed on the amounts they receive.
12 Funds contained in the settlement checks that are returned as undeliverable and in
13 settlement checks uncashed for more than 180 days after issuance will be tendered to the
14 California State Controller's Office - Unclaimed Property Fund, to be held in the name of
15 the Aggrieved Employee.

16 **4.6 No Impact On Employee Benefit Plans.** None of the payments made
17 pursuant to the Agreement shall be considered for purposes of determining eligibility for,
18 vesting or participation in, or contributions to any benefit plan, including, without
19 limitation, all plans subject to the Employee Retirement and Income Security Act of 1974
20 ("ERISA"). Any distribution of payments to Plaintiff and Aggrieved Employees shall
21 not be considered as a payment of wages or compensation under the terms of any
22 applicable benefit plan and shall not affect participation in, eligibility for, vesting in, the
23 amount of any past or future contribution to, or level of benefits under any applicable
24 benefit plan. Any amounts paid will not impact or modify any previously credited hours
25 of service or compensation taken into account under any benefit plan sponsored or
26 contributed to by Defendant or any jointly-trusted benefit plan. For purposes of this
27 Agreement, "benefit plan" means each and every "employee benefit plan," as defined in
28 29 U.S.C. § 1002(3), and, even if not thereby included, any 401(k) plan, bonus, pension,

1 stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement,
2 disability, vacation, sick time or pay, severance, hospitalization, insurance, incentive,
3 deferred compensation, or any other similar benefit plan, practice, program, or policy.

4 **5. RELEASES**

5 **5.1 Release By Plaintiff, The State Of California, And The Aggrieved**
6 **Employees.** Plaintiff, on behalf of himself, the State of California, and the Aggrieved
7 Employees fully and finally release and forever discharge the Released Parties from any
8 and all Released PAGA Claims during the PAGA Period. As a result of this release,
9 Plaintiff, the State of California, and the Aggrieved Employees will not be able to bring a
10 claim or seek civil penalties based on the Released PAGA Claims that took place during
11 the PAGA Period.

12 **5.2 Additional Release By Plaintiff.** In addition to the Released PAGA Claims,
13 upon the Effective Date, Plaintiff will generally release and forever discharge the
14 Released Parties, to the fullest extent permitted by law, of and from any and all claims,
15 known and unknown, asserted and not asserted, which Plaintiff has or may have against
16 the Released Parties as of the date of execution of this Agreement. For the purpose of
17 implementing a full and complete release and discharge of the Released Parties, Plaintiff
18 expressly waives all rights provided by Civil Code section 1542, or any other similar
19 provisions of applicable law, which are as follows: “A general release does not extend to
20 claims that the creditor or releasing party does not know or suspect to exist in his or her
21 favor at the time of executing the release and that, if known by him or her, would have
22 materially affected his or her settlement with the debtor or released party.”

23 **5.3 Injunction From Pursuing Released Claims.** Plaintiff, the State of
24 California, and the Aggrieved Employees shall be enjoined from filing, initiating, or
25 continuing to prosecute any actions, claims, complaints, or proceedings in any court, or
26 with the Division of Labor Standards Enforcement (“DLSE”), or with the LWDA, or the
27 United States Department of Labor (“DOL”), or with any other entity regarding the
28 claims released in the Agreement. This Settlement is conditioned upon the release by

1 Plaintiff, the State of California, and Aggrieved Employees as described herein, and upon
2 covenants by these individuals that they will not participate in any actions, lawsuits,
3 proceedings, complaints, or charges brought by the DLSE, LWDA, DOL, or by any other
4 agency, persons, or entity in any court or before any administrative body related to the
5 claims released in this Agreement. In the event that any court or administrative agency
6 does not order injunctive relief, Defendant shall have the right to file a motion for
7 summary judgment or any other pleading or paper to enforce the terms of this
8 Agreement. Plaintiff's Counsel will not oppose, contest or interfere with efforts by
9 Defendant to oppose any attempt to bring such released claims against Defendant.

10 **6. COMPUTATION OF SETTLEMENT PAYMENTS TO AGGRIEVED**
11 **EMPLOYEES**

12 **6.1 Payments Based On Pay Periods.** The PAGA Payment will be distributed
13 to Aggrieved Employees based on their number of Pay Periods worked during the PAGA
14 Period. Defendant shall provide records (i.e., the Data List) to the Settlement
15 Administrator, showing the total Pay Periods of Aggrieved Employees during the PAGA
16 Period. Defendant's records shall be determinative for purposes of calculating the
17 number of Pay Periods worked and any payments to the Aggrieved Employees.

18 **6.2 Distribution Of PAGA Payment.** Individual Settlement Payments to
19 Aggrieved Employees will be determined by dividing the Aggrieved Employee
20 Settlement Amount (25% of the Net Settlement Amount, which is allocated to Aggrieved
21 Employees) by the total number of Pay Periods, and then multiplying the resulting figure
22 by the number of Pay Periods of each Aggrieved Employee during the PAGA Period.
23 The Settlement Administrator will issue appropriate tax forms for all payments issued
24 under this Agreement. The payments made under this Agreement will be made with
25 respect to the PAGA claims for all Aggrieved Employees and the individual claims for
26 Plaintiff; accordingly, the payments shall be distributed without a claims process or an
27 opportunity to object or opt out.
28

7. SETTLEMENT APPROVAL PROCEDURE

7.1 **Approval Of Settlement Terms.** Upon execution of this Agreement, Plaintiff's Counsel shall promptly prepare the Motion For Approval of PAGA Settlement to be filed in the Action. The Motion For Approval of PAGA Settlement shall seek an order to approve the proposed settlement according to the terms in this Agreement. The Motion For Approval of PAGA Settlement also shall seek an order that provides for the Notice to be sent to Aggrieved Employees as specified in this Agreement. The Motion For Approval of PAGA Settlement shall include the bases for the GSA and why the amount is reasonable in light of the facts and controlling authorities pertaining to the claims alleged in the Action.

7.2 **Entry Of Judgment.** The Parties shall request that the Court issue Judgment in accordance with this Agreement and without further fees or costs to any party except as expressly set forth in this Agreement. In the event either the Court fails to enter final judgment in accordance with this Agreement, or such final judgment is vacated or reversed, the Parties shall revert to their respective position before the Settlement was reached, as if no settlement had been attempted, unless the Parties jointly agree to seek reconsideration or appellate review of the ruling or approval of a renegotiated settlement.

7.3 **Notice To The LWDA.** Plaintiff's Counsel shall give written notice of the PAGA Settlement to the LWDA simultaneously with the filing of the Motion For Approval of PAGA Settlement in the Action pursuant to Labor Code section 2699(1)(2).

8. NOTICE TO AGGRIEVED EMPLOYEES

8.1 **Data List.** Defendant shall provide the Settlement Administrator with the Data List with-in 30 calendar days after the Court grants approval of the proposed Settlement. The Data List is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of Data List. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

1 **8.2 Mailing Of Notice To Aggrieved Employees With Distribution of PAGA**
2 **Payment.** The Settlement Administrator shall use First Class U.S. Mail to mail the
3 Notice to Aggrieved Employees With Distribution of PAGA Payments within 15
4 calendar days of the receipt of the Data List, using the most current, known mailing
5 address for each Aggrieved Employee based on information provided by Defendant. The
6 Notice to Aggrieved Employees With Distribution of PAGA Payment will state as
7 follows: “Essex Property Trust, Inc. has entered into a compromise and settlement with
8 the State of California in connection with claims brought under the Private Attorneys
9 General Act. As part of this compromise and settlement, the Court has ordered the
10 enclosed settlement check.” A copy of the Notice to Aggrieved Employees is attached
11 hereto as **Exhibit A.**

12 **8.3 Non-Delivered Notices Or Checks.** Any mailing returned to the Settlement
13 Administrator as undeliverable shall be re-mailed within five calendar days via First
14 Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is
15 provided, the Settlement Administrator shall attempt to determine the correct address
16 using the National Change of Address Data-base maintained by the United States Postal
17 Service for a single re-mailing via First Class U.S. Mail within five calendar days. If the
18 National Change of Address Database does not provide a correct address, the Settlement
19 Administrator shall attempt to determine the correct address using the Class Member’s
20 Social Security number and any available information provided by Defendant.

21 **9. FUNDING AND DISTRIBUTING OF THE GROSS SETTLEMENT**
22 **AMOUNT**

23 **9.1 Funding Of Gross Settlement Amount.** The Settlement Administrator
24 shall establish a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal
25 Revenue Code for purposes of administering the Settlement. The Settlement
26 Administrator shall furnish the Qualified Settlement Fund with its own Employer ID
27 Number and calculate all settlement checks and withholdings required under law based
28 on information that will be confidentially furnished by Defendant. Within 30 calendar

1 days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into
2 an interest bearing escrow account with the Settlement Administrator, provided that the
3 Settlement Administrator timely and promptly provides funding instructions to
4 Defendant.

5 **9.2 Timing Of Disbursement Of Gross Settlement Amount.**

6 **9.2.1 Attorneys' Fees And Costs.** Subject to the terms of the Agreement,
7 the Settlement Administrator shall distribute payment of any approved Attorneys' Fees
8 And Costs within 15 calendar days after the funding of the Gross Settlement Amount.
9 This is the same date that the Net Settlement Amount will be distributed to Aggrieved
10 Employees. The Settlement Administrator shall issue an Internal Revenue Service Form
11 1099 to Plaintiff's Counsel for any Attorneys' Fees And Costs payment, based on the
12 allocation communicated by Plaintiff's Counsel. Plaintiff's Counsel shall be solely and
13 legally responsible for paying all applicable taxes on any Attorneys' Fees And Costs and
14 shall indemnify and hold harmless Defendant from any claim or liability for taxes,
15 penalties, or interest arising as a result of the payment.

16 **9.2.2 Enhancement Award.** Subject to the terms of the Agreement, the
17 Settlement Administrator shall pay to Plaintiff any approved Enhancement Award within
18 15 calendar days after the funding of the Gross Settlement Amount. The Settlement
19 Administrator shall issue an IRS Form 1099 to Plaintiff for any Enhancement Award.
20 Plaintiff shall be solely and legally responsible for paying all applicable taxes on any
21 Enhancement Award and shall indemnify and hold harmless Defendant from any claim or
22 liability for taxes, penalties, or interest arising as a result of the payments.

23 **9.2.3 Settlement Administrator's Expenses.** The Settlement
24 Administrator shall pay itself any approved Settlement Administrator's Expenses within
25 15 calendar days after the funding of the Gross Settlement Amount. The Settlement
26 Administrator shall be solely and legally responsible for paying all applicable taxes on
27 any Settlement Administrator's Expenses and shall indemnify and hold harmless
28

1 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of
2 the payment.

3 **9.2.4 Distribution Of Net Settlement Amount.** The Settlement
4 Administrator shall distribute LWDA Payment (75% of the Net Settlement Amount) to
5 the LWDA and all Individual Settlement Payments (25% of the Net Settlement Amount)
6 to Aggrieved Employees within 15 calendar days after the funding of the Gross
7 Settlement Amount. The Settlement Administrator shall issue any necessary IRS Form
8 1099 statements to Aggrieved Employees for their respective share of the Net Settlement
9 Amount. Aggrieved Employees shall be solely and legally responsible for paying all
10 other applicable taxes on their respective share of the PAGA Payment and shall
11 indemnify and hold harmless Defendant from any claim or liability for taxes, penalties, or
12 interest arising as a result of the payments.

13 **9.3 Undeliverable Or Uncashed Checks.**

14 9.3.1 The Settlement Administrator shall maintain a list of the postmark
15 date for the original mailing of the Individual Settlement Payments to Aggrieved
16 Employees checks, if any, to the Aggrieved Employees, the postmark date of any
17 subsequent mailing to any Aggrieved Employees, and a list of any individuals who did
18 not receive the settlement checks due to the inability to locate a valid address using the
19 procedures described herein above in Section 8.2 or who otherwise could not be located
20 within two attempts at mailing.

21 9.3.2 All Individual Settlement Payments to Aggrieved Employees checks
22 will remain valid and negotiable for 180 days from the date of their mailing by the
23 Settlement Administrator. After 180 calendar days from the date of mailing, the checks
24 shall become null and void, and any monies remaining in the distribution account shall be
25 distributed by the Settlement Administrator to the California State Controller's Office
26 pursuant to California's Unclaimed Property Law. No part of the PAGA Payment shall
27 be returned to Defendant.
28

9.3.3 For any Aggrieved Employees for whom the settlement checks were deemed undeliverable, the funds associated with the settlement payment will be distributed to the California State Controller's Office pursuant to California's Unclaimed Property Law.

10. MISCELLANEOUS PROVISIONS

10.1 Interim Stay Of Proceedings. The Parties agree to refrain from further litigation in the Action, except such proceedings necessary to implement and to obtain approval of the terms of the Agreement. If the Settlement is not finally approved, the Parties agree that they will revert to their positions in the lawsuit before the time the Agreement was reached, and no terms set forth in this Agreement will be admissible in any future proceedings in this case or any other action.

10.2 Stipulation To Representative Action For Settlement Purposes Only. The Parties agree to stipulate that the representative action is appropriate for purposes of the settlement only. If, for any reason, the settlement is not approved, the stipulation will be void, and Defendant shall have the full opportunity to file any motion to challenge liability for the PAGA claims or to challenge the manageability of PAGA claims. The Parties further agree that the stipulation is not an admission or waiver by Defendant to challenge the propriety of the PAGA claims, including whether PAGA claims are appropriate for adjudication on a representative basis.

10.3 Mutual Cooperation. Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the terms of this Agreement, including, but not limited to, execution of such documents and taking such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement.

10.4 Plaintiff's Counsel's Representation. Plaintiff's Counsel agrees and represents that he will not engage in any conduct to undermine the terms of the

1 Agreement. The Parties agree that verifiable electronic signatures are sufficient.
2 However, if the Court orders wet signatures, the Parties will follow the Court's Order.

3 **10.5 Parties' Authority.** The signatories hereto represent that they are fully
4 authorized to enter into this Agreement and are fully authorized to bind the Parties to all
5 terms stated herein. It is agreed this Agreement may be executed on behalf of the State of
6 California and the Aggrieved Employees and by Plaintiff and Plaintiff's Counsel.

7 **10.6 Binding Effect Of Settlement.** Although some Aggrieved Employees
8 might not receive the notice as provided under this Agreement, due to inability to locate
9 their current address following the procedures set forth in this Agreement, such
10 individuals shall nonetheless be bound by all of the terms of this Agreement and the order
11 approving the Settlement.

12 **10.7 Entire Agreement.** This Agreement constitutes the entire agreement
13 between the Parties with regard to the subject matter contained herein, and all prior and
14 contemporaneous negotiations and understandings between the Parties shall be deemed
15 merged into this Agreement. However, if the Court does not issue an Order for Approval
16 of this Agreement, and the Parties are unable to reach an understanding that satisfies the
17 Court's concerns, then Defendant shall have the right to seek enforcement of the MOU.

18 **10.8 Arms' Length Transaction; Materiality Of Terms.** The Parties have
19 arrived at this Agreement as a result of arm's length negotiations. Except as otherwise
20 stated in this Agreement, all terms and conditions of this Agreement in the exact form set
21 forth in this Agreement are material to this Agreement and have been relied upon by the
22 Parties in entering into this Agreement.

23 **10.9 Counterparts.** This Agreement may be executed in counterparts, and when
24 each party has signed and delivered at least one such counterpart, each counterpart shall
25 be deemed an original, and when taken together with other signed counterparts, shall
26 constitute one signed Agreement, which shall be binding upon and effective as to all
27 Parties.
28

1 **10.10 DocuSign Or Scanned Signatures.** Any party may sign and deliver this
2 Agreement by signing on the designated signature block and transmitting that signature
3 page via Docusign or as an imaged attachment. Any signature made and transmitted by
4 Docusign or as an imaged attachment for the purpose of executing this Agreement shall
5 be deemed an original signature for purposes of this Agreement and shall be binding
6 upon the party who transmits the signature page.

7 **10.11 Binding Effect.** This Agreement shall be binding upon the Parties and, with
8 respect to Plaintiff, the State of California, the LWDA, Aggrieved Employees, their
9 spouses, children, rep-representatives, heirs, administrators, executors, beneficiaries,
10 conservators, attorneys, and assigns.

11 **10.12 Construction.** The determination of the terms and conditions of this
12 Agreement has been by mutual agreement of the Parties. Each party participated jointly
13 in the drafting of this Agreement, and the terms and conditions of this Agreement are not
14 intended to be, and shall not be, construed against any party by virtue of draftsmanship.

15 **10.13 Severability Clause For Invalidity Of Any Provision.** Before declaring
16 any provision of this Agreement invalid, the Court shall first attempt to construe the
17 provisions valid to the fullest extent possible consistent with applicable precedents so as
18 to render all provisions of this Agreement valid and enforceable.

19 **10.14 No Prior Assignments Or Undisclosed Liens.** Plaintiff represents and
20 warrants that he has not assigned, transferred, conveyed, or otherwise disposed of, or
21 purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or the
22 attorneys' fees and costs to be paid pursuant to this Agreement. Plaintiff further
23 represents and warrants that there are not any liens or claims against any of the amounts
24 to be paid by Defendant pursuant to this Agreement. Plaintiff agrees to defend, to
25 indemnify, and to hold Defendant harmless from any liability, losses, claims, damages,
26 costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these
27 representations or from any lien or assignment.
28

1 **10.15 No Initiated Publicity.** Plaintiff's Counsel shall not take any action or
2 initiate to publicize, or cause to be publicized, directly or indirectly, the discussions
3 resulting in or the existence of this settlement or its terms, in any type of mass media,
4 including, but not limited to, speeches, press conferences, press releases, interviews,
5 television or radio broadcasts, blogs, websites, newspapers, Internet posting, Facebook,
6 Instagram, Twitter or any other social media, or information furnished to legal news
7 media, including but not limited to Bloomberg Law, Law 360, and the Daily Journal.
8 Plaintiff's Counsel shall not refer to Defendant by name in its public marketing materials,
9 law firm websites, or posting with any other organizations, such as the California
10 Employment Lawyers Association ("CELA"). Plaintiff's Counsel further agrees and
11 warrants that if he were contacted by media outlets regarding this case, he will simply
12 state that the lawsuit exists and has been resolved.

13 **10.16 Continuing Jurisdiction.** The Court shall retain jurisdiction over the
14 implementation of this Agreement as well as any and all matters arising out of, or related
15 to, the implementation of this Agreement and settlement. The Court shall not have
16 jurisdiction to modify the terms of the Agreement without the consent of all of the
17 Parties.

18 **10.17 Modification.** The Agreement may not be changed, altered, or modified,
19 except in writing and signed by the Parties hereto or their counsel of record. After
20 approval of the Settlement has been granted, the Settlement may not be modified except
21 by a writing signed by the Parties hereto or their counsel of record, and approved by the
22 Court.

23 **10.18 Disputes.** If the Parties have a dispute with regard to the language of this
24 Agreement, they agree to first attempt to resolve the dispute informally through good
25 faith negotiations, but if those efforts are unsuccessful, they agree to mediate any such
26 dispute, with Steven Serratore, the mediator that helped the Parties reach the Settlement.
27 The Parties will split the costs of the mediator, and all parties will bear their own fees and
28 costs.

10.20 Compliance with PAGA's Procedural Requirements. Plaintiff agrees that Plaintiff's Counsel will notify the LWDA of the Settlement and perform any and all statutory tasks as required by law necessary to effectuate consummation and approval of this Settlement. Plaintiff will promptly submit this Agreement to the LWDA and before the filing of the Motion For Approval Of The PAGA Settlement.

10.21 Papers To Be Filed With The Court. All papers to be filed with the Court by Defense Counsel or Plaintiff's Counsel in connection with this Agreement shall be submitted to the other party at least three business days before filing. The other party shall have no right to object to the papers unless they do not conform to the terms and conditions of this Agreement.

DATED: June 6/1, 2024
1/2
024

DocuSigned by:
By: 
82CB754EAC9649C
SALVADOR VELEZ,
Plaintiff

DATED: June^{17.00}, 2024

DocuSigned by:
By: 
ESSEX PROPERTY TRUST, INC.,
Defendant

1 DATED: June 18, 2024

SEYFARTH SHAW LLP



By: _____

Jon D. Meer
Leo Q. Li
Michael A. Sigall
David J. Kim
Attorneys for Defendant
ESSEX PROPERTY TRUST, INC.

EXHIBIT A

Date: / /2024

To: <<First Name>><<Last Name>>
<<Address>>
<<City>> <<State>> <<Zip>>

Re: Settlement Payment from Velez v. Essex Property Trust, Inc.
Superior Court of California for the County of San Diego,
Case No. 37-2023-00020787-CU-OE-CTL

Dear [First Name] [Last Name]:

Essex Property Trust, Inc. has entered into a compromise and settlement with the State of California in connection with claims brought under the Private Attorneys General Act. As part of this compromise and settlement, the Court has ordered the enclosed settlement check.

If you have any questions, please contact the court-approved settlement administrator, Phoenix Class Action Administration Solutions, using the information below:

Phoenix Class Action Administration Solutions

<<Address>>

<<City>> <<State>> <<Zip>>

Tel: () -

Email:

DO NOT CONTACT THE COURT ABOUT THIS SETTLEMENT.