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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

GERARDO TORO, as an individual, USMAN  
LOPEZ ESCOBAR, as an individual, and on  
behalf of all others similarly situated,

Plaintiff,

vs.

L.A. PROPERTIES HEFFESSE LLC, a  
California limited liability company; and DOES  
1 through 10,

Defendants.

Case No. 23STCV26332

*[Assigned for all purposes to the Hon. Laura A.  
Seigle, Dept. SSC-17]*

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: November 18, 2024  
Time: 9:00 a.m.  
Dept.: SSC-17

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on  
3 November 18, 2024 at 9:00 a.m. in Department SSC-17 of the above-entitled Court, located at 312  
4 North Spring Street, Los Angeles, California, 90012, Plaintiffs Gerardo Toro and Usman Lopez Escobar  
5 (“Plaintiffs”), individually and on behalf of a class of similarly situated individuals, will and hereby  
6 does move this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;  
8 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement  
9 purposes only, provisional certification of the following Settlement Class defined as follows:

10 All individuals whom Defendant L.A. Properties Heffesse LLC and/or Joseph  
11 Heffesse employed in the positions of maintenance, handyman, administrative,  
12 and/or all individuals who assist in business operations and who worked for  
Defendants in California at any time during the Class Period.

13 Class Period shall mean the time period between October 6, 2019 through the  
14 date the Court preliminarily approves the Settlement.

- 15 3. Preliminary appointment of Plaintiffs Gerardo Toro and Usman Lopez Escobar as Class  
16 Representatives;  
17 4. Preliminary appointment of Scott M. Lidman and Milan Moore of Lidman Law, APC and  
18 Paul K. Haines of Haines Law Group, APC as Class Counsel;  
19 5. The scheduling of a hearing to consider whether the Settlement should be finally approved  
20 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties  
21 payable to the California Labor Workforce Development Agency, and attorneys’ fees and  
22 costs to Class Counsel;  
23 6. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement  
24 Administrator for mailing notices; and  
25 7. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final  
26 Court Approval (“Class Notice”), which is attached to the Settlement as Exhibit A and an  
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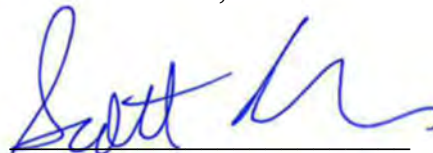
1 order that it be disseminated to the proposed Settlement Class Members as provided in the  
2 Settlement Agreement.

3 This Motion is based on this notice of motion, the memorandum of points and authorities, the  
4 declarations of Scott M. Lidman, Milan Moore, Paul K. Haines, Plaintiff Gerardo Toro, Plaintiff Usman  
5 Lopez Escobar, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits  
6 attached thereto, the pleadings and other papers filed in this action, and on any further oral or  
7 documentary evidence or argument presented at the time of hearing.

8  
9 Dated: September 4, 2024

Respectfully submitted,  
LIDMAN LAW, APC

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12 By:



13 Scott M. Lidman  
14 Attorney for Plaintiffs  
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## I. INTRODUCTION

Plaintiffs Jose Martinez (“Plaintiff”) brought this class and representative action against Defendants L.A. Properties Heffesse LLC and Joseph Heffesse (hereinafter “Defendants”) alleging various wage and hour and related violations. Plaintiffs’ primary claims are that SES: (1) failed to pay all overtime wages owed; (2) failed to provide all legally required meal periods; (3) failed to authorize and permit all legally required rest periods; (4) failed to provide accurate, itemized wage statements; (5) failed to pay all necessary business expenses; (6) failed to pay all wages upon termination; (7) engaged in unlawful business practices; and (8) are liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Plaintiffs now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement,<sup>1</sup> in which Defendants have agreed to pay Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) on behalf of the following Settlement Class:

All individuals whom Defendant L.A. Properties Heffesse LLC and/or Joseph Heffesse employed in the positions of maintenance, handyman, administrative, and/or all individuals who assist in business operations and who worked for Defendants in California at any time during the Class Period.

Class Period shall mean the time period between October 6, 2019 through the date the Court preliminarily approves the Settlement.

Significantly, Settlement Class Members do not need to file a claim to benefit from the Settlement because all Settlement Class Members will automatically receive a payment unless they affirmatively opt-out. After deducting administration costs, Plaintiffs' service payments, attorneys' fees and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount ("NSA") of approximately \$267,583.33 will be distributed to all Class Members who do not opt-out of the Settlement. There were approximately 48 Class Members as of the date of mediation, and **not** including the \$5,000 for 39 Aggrieved Employees, the average payment to participating Class Members is estimated to be approximately **\$5,574.65.**

This proposed Settlement is well-within the range of possible approval in light of the significant

<sup>1</sup> The Settlement is attached to the Declaration of Scott M. Lidman as Exhibit 3. The proposed Class Notice is attached to the Settlement as Exhibit A.

1 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible  
2 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiffs  
3 respectfully request that the Court grant preliminary approval of the Settlement.

## 4 **II. SUMMARY OF THE LITIGATION**

### 5 **A. THE PARTIES**

6 Defendants are a real estate agency that also manages properties. Plaintiff Toro, a current  
7 employee, has been employed by Defendant since approximately February 5, 2001 through  
8 approximately March 10, 2023, at which time he began a medical leave of absence. Plaintiff Toro has  
9 worked as a Building Maintenance and Repair employee and was classified as an exempt employee.  
10 See Declaration of Gerardo Toro (“Toro Decl.”), ¶ 2. Plaintiff Escobar, a former employee, was  
11 employed by Defendant from approximately 2004 through approximately September 25, 2023. During  
12 his employment with Defendant, Plaintiff Escobar held the position of Maintenance and Painter and  
13 was classified as an exempt employee. See Declaration of Usman Lopez Escobar (“Escobar Decl.”), ¶  
14 2.

### 14 **B. BRIEF PROCEDURAL HISTORY**

15 On October 6, 2023, Plaintiff Gerardo Toro commenced an action by filing a Complaint against  
16 Defendant L.A. Properties Heffesse LLC alleging individual causes of action against Defendant for: (i)  
17 failure to pay all overtime wages owed; (ii) failure to pay all minimum wages owed; (iii) failure to  
18 provide meal periods; (iv) failure to authorize and permit all rest periods; (v) unlawful deductions from  
19 wages; (vi) failure to provide accurate, itemized wage statements; (vii) failure to timely pay all wages  
20 upon separation of employment; (viii) failure to reimburse necessary business expenses; and (ix) unfair  
21 competition. Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10. On October 27, 2023, Plaintiffs  
22 commenced this Action by filing a class action Complaint against Defendant L.A. Properties Heffesse  
23 LLC alleging class-wide causes of action against Defendant L.A. Properties Heffesse LLC for: (i)  
24 failure to pay all overtime wages owed; (ii) failure to pay all minimum wages owed; (iii) failure to  
25 provide meal periods; (iv) failure to authorize and permit all rest periods; (v) unlawful deductions from  
26 wages; (vi) failure to provide accurate, itemized wage statements; (vii) failure to timely pay all wages  
27 upon separation of employment; (viii) failure to reimburse necessary business expenses; and (ix) unfair  
28 competition. *Id.*

1 On October 31, 2023, the Court, at Plaintiff Gerardo Toro's request, dismissed his individual  
2 lawsuit without prejudice. Pursuant to Labor Code section 2699.3, subd.(a), on October 30, 2023,  
3 Plaintiffs gave timely written notice to Defendant L.A. Properties Heffesse LLC and the LWDA by  
4 sending the PAGA Notice. *Id.* at **Exhibit 1**. On January 4, 2024, Plaintiffs filed a First Amended  
5 Complaint in the Action which added a claim for civil penalties under the PAGA. *Id.* 2.8. On May 22,  
6 2024, Plaintiffs filed a DOE Amendment in the Action substituting Joseph Heffesse, as an individual,  
7 in as a named defendant in place of DOE 1.

8 Further, Plaintiffs will serve the instant Motion and proposed Settlement Agreement on the  
9 LWDA on the same date they file this Motion and will submit a supplemental declaration showing the  
10 submission. Lidman Decl., ¶ 34.

### 11 **III. DUNK/KULLAR ANALYSIS**

12 Settlement is the preferred means of dispute resolution, particularly in complex class action  
13 litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in  
14 evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See*  
15 *e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the  
16 Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of a  
mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

#### 17 **A. INVESTIGATION AND DISCOVERY**

18 Prior to mediation, Defendants took the depositions of Plaintiffs. Additionally, Defendants  
19 produced the payroll data for the entire putative class as well as other relevant documents and  
20 information relevant to the claims alleged. Lidman Decl., ¶ 11.

21 In addition to the representative sampling, Defendants produced key data points. Specifically,  
22 Plaintiffs were provided with the following:

- 23 • Plaintiffs' personnel files and payroll documents;
- 24 • Key data points, including total number of employees, workweeks, and pay periods during  
25 the relevant time period;
- 26 • Exemplars of the wage statements provided during the relevant time period.

27 *Id.*

1 This information coupled with the data for the entire putative class, aided in Plaintiffs’ creation of a  
2 class-wide exposure model for all the claims at issue, including unpaid wages and penalties potentially  
3 owed for alleged overtime wages, and meal and rest and unpaid wages violations. Ultimately, this  
4 discovery allowed the parties to assess the merits and value of Plaintiffs’ claims and Defendants’  
5 defenses thereto. *Id.*

## 6 **B. ARMS-LENGTH NEGOTIATIONS**

7 On May 21, 2024, a mediation was held with Steven G. Mehta, a well-respected wage and hour  
8 class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their  
9 opposing legal positions, the likelihood of certification of Plaintiffs’ claims, and the legal basis for the  
10 claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution. *Id.*

## 11 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

12 “Parties represented by competent counsel are better positioned than courts to produce a  
13 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*  
14 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented by competent,  
15 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class  
16 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*  
17 Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendants’  
18 payroll records and drew on their extensive experience in similar cases to assess the strengths and  
19 weaknesses of Plaintiffs’ case. *See* Lidman Decl., ¶¶ 10-28. The Settlement was also reached with the  
20 assistance of a mediator. *Id.* This factor strongly supports preliminary approval of the Settlement. *See*  
*Kullar, supra*, 168 Cal.App.4th at 130.

## 21 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF** 22 **CLAIMS**

23 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in  
24 the face of disputed claims. Plaintiffs’ analysis of the maximum and realistic expected recoveries for  
25 each of the theories of liability pled is set forth below:

26 Failure to Pay Overtime Wages: Plaintiffs allege that Defendants failed to properly compensate  
27 their employees for all time worked. Lidman Decl., ¶ 16. Specifically, Plaintiffs allege that as a result  
28 of Defendants’ misclassification as exempt, Plaintiffs and the other Settlement Class Members were

1 not paid for their overtime hours worked. *Id.* Defendants paid Plaintiffs and the other Settlement Class  
2 Members a flat salary which was not based on the number of hours actually worked. Plaintiffs and the  
3 other Settlement Class Members regularly worked more hours than scheduled and on average worked  
4 in excess of 8.0 to 10.0 hours per day. *Id.* Accordingly, based on 5 hours of unpaid overtime hours,  
5 Plaintiffs estimate Defendants' exposure at a total of \$1,149,885 (6,900 workweeks x 5 OT hours/week  
6 x \$33.33 average overtime rate). *Id.*

7 Defendants contend that they compensated Settlement Class members for all of their time  
8 worked. Lidman Decl., ¶ 17. Specifically, Defendants contend that they properly classified Settlement  
9 Class Members as exempt and therefore did not have to pay overtime wages. *Id.* Defendants further  
10 assert that Plaintiffs would be unable to certify this class given the individualized inquiries that would  
11 be required, including without limitation how many hours each Settlement Class Member was working,  
12 which would be difficult because contemporaneous timekeeping records were not maintained. In light  
13 of these defenses, Plaintiffs discounted the maximum exposure by 50% for the risk of non-certification,  
14 and an additional 40% to account for Defendants' defenses on the merits to arrive at an estimated  
15 exposure of approximately \$344,965.50. *Id.*

16 Failed to Provide All Legally Required Meal Periods: Plaintiffs allege that as a result of the work  
17 demands imposed by Defendants, the Settlement Class Members were not provided a full uninterrupted  
18 30-minute meal period before the end of the fifth hour of work. Lidman Decl., ¶ 18. Additionally,  
19 Defendants did not require Settlement Class Members to track the start and stop time of meal periods  
20 when they remained on the work premises. *Id.* Therefore, Plaintiffs calculated Defendants' maximum  
21 exposure for the alleged meal period violations at \$766,590 (6,900 workweeks x 5 shifts/week x \$22.22  
22 average hourly rate). *Id.*

23 Defendants counter that they have always maintained a lawful meal period policy and provided  
24 employees with an opportunity to take legally compliant meal periods, and any non-compliant meal  
25 periods were solely the result of employee choice, rather than any policy or practice of Defendants.  
26 Lidman Decl., ¶ 19. Further, Defendants point out that under *Brinker Restaurant Corp. v. Superior*  
27 *Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not  
28 "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038

(rejecting “ensure” standard). Finally, Defendants contend Plaintiffs’ meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.* Accordingly, Plaintiffs discounted the maximum exposure by 50% for the risk of non-certification, and an additional 45% to account for Defendants’ defenses on the merits to arrive at an estimated exposure of \$210,812.25. *Id.*

Failed to Authorize and Permit All Paid Rest Periods: Plaintiffs allege that as a result of the work demands imposed by Defendants, Settlement Class Members were not authorized and permitted to take duty-free net 10-minute rest periods. Lidman Decl., ¶ 20. Specifically, Plaintiffs allege that employees experienced at least one rest period violation on every shift in excess of 3.5 hours given the work demands. Therefore, Plaintiffs calculated Defendants’ maximum exposure for the alleged rest period violations at approximately \$766,590 (6,900 workweeks x 5 shifts/week x \$22.22 average hourly rate). *Id.*

Defendants contend that their policies and procedures authorized and permitted Settlement Class Members to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Defendants also argue that Plaintiffs’ rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would evolve into an unmanageable series of mini-trials. *Id.* Accordingly, Plaintiffs discounted the maximum exposure by 50% for the risk of non-certification, and an additional 40% to account for Defendants’ defenses on the merits to arrive at an estimated exposure of \$229,977.00. *Id.*

Issued Inaccurate Itemized Wage Statements: Plaintiffs further alleges that Defendants issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid overtime wages, and meal and rest period premium wages described above. Lidman Decl., ¶ 22. Plaintiffs calculated Defendants’ maximum exposure for wage statement violations at approximately \$71,600 (\$50.00 x 28 current employees + \$100 x 702 subsequent wage statements). *Id.*

Defendants argue that their alleged wage statement violations could not be shown to be “knowing

1 and intentional,” and that Plaintiffs cannot show that they or any other employee “suffer[ed] injury” as  
2 a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of  
3 penalties. Lidman Decl., ¶ 23. As such, Plaintiffs discounted the calculated exposure by 35% for a risk  
4 of non-certification and an additional 35% for a risk of being unsuccessful on the merits, to arrive at an  
5 estimated total of \$30,251.00. *Id.*

6 Failed to Reimburse Necessary Business Expenses: Plaintiffs allege that Defendants failed to  
7 reimburse Settlement Class members for necessary business expenditures, including the use of their  
8 personal cellular phones for work activities and drive their personal cars, as required under Labor Code  
9 section 2802 and by *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137. Lidman  
10 Decl., ¶ 24. Plaintiffs contend that Defendants required them to use their personal cellular phones and/or  
11 vehicles for work-related purposes but Defendants did not reimburse the putative class members for the  
12 cell phones and/or the data usage and/or cars. *Id.* Accordingly, Plaintiffs calculate Defendants’  
13 maximum exposure for this claim at approximately \$342,450 ((Approximately 55 months x \$50/month  
14 x 48 employees = \$132,000 for cellular phones + 6,900 workweeks x 50 miles/week x .61 average  
15 mileage rate during relevant time period = \$210,450)). *Id.*

16 Defendants argue that any expenses incurred were minimal given the affordability of cellular  
17 usage plans and Settlement Class members did not have to travel between sites each shift. Lidman Decl.,  
18 ¶ 25. Defendants also argue that this claim is not suitable for class treatment because it would require  
19 individualized determinations as to whether each employee used a personal cellular phone and how  
20 often. Additionally, individual determinations is required to determine miles driven for work purposes  
21 *Id.* Accordingly, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification,  
22 and an additional 40% to account for Defendants’ defenses on the merits, to arrive at an estimated  
23 exposure of \$133,555.50. *Id.*

24 Waiting Time Penalties: Plaintiffs alleges that Defendants are also liable for waiting time  
25 penalties under Labor Code section 203 as a result of its failure to pay all overtime wages upon  
26 separation of employment. Lidman Decl., ¶ 26. Based on the data provided by Defendants, there  
27 were approximately 18 Settlement Class Members who have separated their employment with  
28 Defendants during the relevant time period who could be entitled to waiting time penalties. *Id.*

1 Therefore, Plaintiffs calculated Defendants' maximum exposure for waiting time penalties at  
2 approximately \$95,990 (\$22.22/hour x 8 hours/day x 30 days x 18 formers). *Id.*

3 Defendants assert they have strong defenses to the waiting time claim because there exist  
4 good-faith disputes as to Plaintiffs' underlying claims, precluding imposition of penalties. Lidman  
5 Decl., ¶ 27. *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will  
6 preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017)  
7 (holding that "good faith dispute" over whether employee was exempt precluded imposition of  
8 waiting time penalties over contested wages owed). Accordingly, Plaintiffs discounted the maximum  
9 exposure by 35% for the risk of non-certification, and an additional 30% to account for Defendants'  
10 defenses on the merits to arrive at an estimated exposure of approximately \$43,675.45. *Id.*

11 Liable for PAGA Civil Penalties: Plaintiffs also seek civil penalties under the PAGA as a result  
12 of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 28. Plaintiffs calculated Defendants'  
13 maximum exposure at \$73,000 (730 pay periods x \$100 initial violation rate). *Id.*; *see Amaral v. Cintas*  
14 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer  
15 is notified that it is violating a Labor Code provision).

16 Defendants argue that Plaintiffs' PAGA claim will fail for the same reasons that their underlying  
17 claims will fail. Lidman Decl., ¶ 29; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147  
18 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail.").  
19 Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion  
20 to substantially reduce any PAGA penalties if it were to find Defendants liable for any of Plaintiffs'  
21 claims. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th  
22 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case  
23 No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at \*4 (reducing PAGA penalties from \$2.8  
24 million to \$500,000). *Id.* Therefore, Plaintiffs discounted the maximum exposure figure by 30% for a  
25 risk of being unsuccessful on the merits, and an additional 30% to account for the possibility of this  
26 Court reducing penalties, to arrive at an estimated exposure of \$35,770. *Id.*

#### 27 **E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

28 Using these estimated figures for each of the claims described above, Plaintiffs predicted the

1 realistic total recovery for the Settlement Class would be approximately \$1,029,006.70. Lidman Decl.,  
2 ¶30. The proposed settlement of \$500,000.00 therefore represents approximately 49% of the reasonably  
3 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement  
4 will provide tangible monetary relief to Settlement Class Members and will still provide an average  
5 recovery to Settlement Class Members of over \$5,500.00.

6 The proposed settlement reflects approximately 49% of the estimated recovery the Settlement  
7 Class could reasonably expect in light of the significant litigation risks and will provide tangible  
8 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure  
9 recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Dunleavy v. Nadler*  
10 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential  
11 recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,  
12 Plaintiffs submit that the proposed settlement is within the range of approval, such that notice should  
13 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the  
14 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has  
15 expired.

#### 16 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER** 17 **LITIGATION, AND RISK OF MAINTAINING CLASS ACTION STATUS**

18 Although the parties engaged in informal discovery throughout this action, the parties still had  
19 significant discovery to complete in formal litigation had the matter not settled. Lidman Decl., ¶ 34.  
20 Moreover, Plaintiffs still had to file for class certification, and faced the prospect of appeals in the wake  
21 of a disputed class certification ruling for Plaintiffs and/or an adverse summary judgment ruling. *Id.*  
22 Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs  
23 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those  
24 risks and the accompanying expense. Thus, this factor supports preliminary approval.

#### 25 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

26 California Rule of Court 3.769 conditions settlement of a class action on court approval, which  
27 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of  
28 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

As further explained below, the Settlement Class satisfies the criteria for certification of a

1 settlement class under California law because: (1) the Settlement Class is so numerous that joinder  
2 would be impractical; (2) common questions of law/fact predominate over individual questions such  
3 that class certification is the most efficient way to maintain this litigation; (3) Plaintiffs' claims are  
4 typical of the claims of absent Settlement Class Members; and (4) Plaintiffs and their counsel will fairly  
5 and adequately represent Settlement Class Members' interest. See Cal. Civ. Proc. § 382.

6 **A. NUMEROSITY IS SATISFIED.**

7 Here, the proposed Settlement Class consists of 48 members, and is therefore sufficiently  
8 numerous as to make joinder impracticable. See Lidman Decl., ¶ 14; See, e.g., *Bowles v. Sup. Ct.*  
9 (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous).  
10 Thus, numerosity is satisfied.

11 Further, the class is "ascertainable" because it is defined as "all individuals whom Defendant  
12 L.A. Properties Heffesse LLC and/or Joseph Heffesse employed in the positions of maintenance,  
13 handyman, administrative, and/or all individuals who assist in business operations and who worked for  
14 Defendants in California at any time during the Class Period. "Class Period" shall mean the time period  
15 between October 6, 2019 through the date the Court preliminarily approves the Settlement" and such  
16 members can be identified from Defendants' personnel/business records. Lidman Decl., ¶ 14.

17 **B. COMMONALITY IS SATISFIED.**

18 The focus in a certification dispute is not the merits, but rather on what types of questions,  
19 "common or individual," are likely to arise in the action. See *Sav-On Drug Store, Inc. v. Superior*  
20 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

21 Here, Plaintiffs allege Class Members' claims arise from Defendants' common, uniform  
22 policies and practices that applied to Settlement Class Members during the class period. Lidman Decl.,  
23 ¶ 15. Specifically, Plaintiffs alleged that Defendants' common and uniform policies and practices  
24 resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to provide  
25 all legally required meal periods; (3) failure to authorize and permit all legally required rest periods;  
26 (4) failure to provide accurate, itemized wage statements; (5) failure to pay all necessary business  
27 expenses; (6) failure to pay all wages upon termination; (7) engagement in unlawful business practices;  
28 and (8) liability for civil penalties under PAGA. As a result of the common and uniform policies and

practices that applied to all Class Members, their claims involve common questions of law and fact as to whether in fact Defendants committed these alleged violations.

These alleged practices result in common questions as to the affected Class Members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

**C. TYPICALITY IS SATISFIED.**

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347. Here, Plaintiffs' claims are typical of those held by the members of the proposed Settlement Class. Plaintiffs were employed by Defendants during the Class Period as exempt employees and were subject to Defendants' wage and hour policies at issue in this case. *See* Toro Decl., ¶ 2; Escobar Decl., ¶ 2. Further, Plaintiffs were allegedly injured by the same challenged policies that allegedly injured the Settlement Class as a whole. *Id.* Given that Defendants' policies and practices applied to all exempt employees, Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiffs. Accordingly, typicality is satisfied.

**D. ADEQUACY IS SATISFIED.**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiffs and the Settlement Class they seek to represent. Lidman Decl., ¶ 38, Toro Decl., ¶ 12; Escobar Decl., ¶ 12. Indeed, Plaintiffs' interests are aligned with those of the Class Members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-4.

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1 **V. SETTLEMENT AGREEMENT**

2 **A. THE BASICS**

3 1. Class Definition and Release Period

4 The proposed Settlement Class is defined as: all individuals whom Defendant L.A. Properties  
5 Heffesse LLC and/or Joseph Heffesse employed in the positions of maintenance, handyman,  
6 administrative, and/or all individuals who assist in business operations and who worked for Defendants  
7 in California at any time during the Class Period. Class Period shall mean the time period between  
8 October 6, 2019 through the date the Court preliminarily approves the Settlement. Lidman Decl., ¶ 14.

9 2. Aggrieved Employees and PAGA Period

10 The proposed Aggrieved Employees are defined as: all individuals whom Defendant L.A.  
11 Properties Heffesse LLC and/or Joseph Heffesse employed in the positions of maintenance, handyman,  
12 administrative, and/or all individuals who assist in business operations and who worked for Defendants  
13 in California at any time during the PAGA Period. PAGA Period means the period from October 6,  
14 2022 through the date the Court preliminarily approves the Settlement. Lidman Decl., ¶ 14.

15 **B. RELEASE OF CLAIMS**

16 1. Scope of Participating Class Members' Release

17 All Participating Class Members, on behalf of themselves and their respective former and  
18 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release  
19 Defendants and their respective former, current and future parent companies, subsidiaries, affiliates,  
20 shareholders, managers, members, agents, principals, heirs, representatives (including, without  
21 limitation, any investment bankers, accountants, auditors, consultants, insurers, reinsurers, attorneys  
22 and any past, present or future officers, directors and employees) predecessors, successors, and assigns  
23 ("Released Parties") from all claims that were alleged, or reasonably could have been alleged, based on  
24 the facts stated in the operative First Amended Complaint and/or ascertained in the course of the Action  
25 and which occurred during the Class Period. The claims released include, without limitation: (1) failure  
26 to pay overtime wages; (2) failure to provide meal periods or provide premium wages in lieu thereof;  
27 (3) failure to provide rest periods or provide premium wages in lieu thereof; (4) failure to provide  
28 accurate, itemized wage statements; (5) failure to timely pay all wages upon separation of employment;  
(6) failure to reimburse necessary business expenses; and (9) unfair business practices in violation of

1 Business and Professions Code section 17200, et seq. premised on the above claims; and violation of or  
2 liability under California Labor Code under sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7,  
3 510, 512, 516, 558, 1194, 1198, 2802 and the relevant Wage Orders issued by the Industrial Welfare  
4 Commission, and any and all related claims for attorneys' fees and costs. Except as set forth in Section  
5 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims  
6 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,  
7 unemployment insurance, disability, social security, workers' compensation, or claims based on facts  
8 occurring outside the Class Period. Settlement, ¶ 5.2.

9  
10 2. Scope of Aggrieved Employees' Release

11 All Aggrieved Employees release, on behalf of themselves and their respective former and  
12 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released  
13 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged,  
14 based on the facts stated in the operative First Amended Complaint and/or the PAGA Notice and/or  
15 ascertained in the course of the Action and which occurred during the PAGA Period. The claims  
16 released include, without limitation: (1) failure to pay overtime wages; (2) failure to provide meal  
17 periods or provide premium wages in lieu thereof; (3) failure to provide rest periods or provide premium  
18 wages in lieu thereof; (4) failure to provide accurate, itemized wage statements; (5) failure to timely pay  
19 all wages upon separation of employment; (6) failure to reimburse necessary business expenses, and the  
20 relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for  
21 attorneys' fees and costs. Settlement, ¶ 5.3.

22 3. Releases Effective Date

23 The releases described above are effective on the date when Defendants fully fund the entire  
24 Gross Settlement Amount and fully fund all employer payroll taxes owed on the Wage Portion of the  
25 Individual Class Payments, Plaintiffs, Class Members, and Class Counsel. Settlement, ¶ 5.

26 **C. MONETARY TERMS OF SETTLEMENT**

27 1. Gross Settlement Amount and Timing of Payment

28 If the Court approves this Settlement, Defendants will pay a Gross Settlement Amount ("GSA")  
of \$500,000.00. Lidman Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ 3.1). Significantly, this Settlement is **non-reversionary**, and no Class Member will have to submit a claim form to receive a Settlement Award.

1 *Id.* Each Class Member will automatically receive a Settlement Award unless he or she affirmatively  
2 opts out of the Settlement. *Id.*

3 Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary  
4 to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later  
5 than thirty (30) days after the Effective Date.<sup>2</sup> See Settlement, ¶ 4.3.

6 2. Deductions from Gross Settlement Amount

7 The monetary terms of the Settlement are summarized below:

|                                                                |                     |
|----------------------------------------------------------------|---------------------|
| 8 <b>Gross Settlement Amount ("GSA"):</b>                      | <b>\$500,000.00</b> |
| 9 Minus Court-approved attorneys' fees (update to 1/3 of GSA): | \$166,666.67        |
| 10 Minus Court-approved, verified costs (up to \$25,000.00):   | \$25,000.00         |
| 11 Minus Court-approved Class Representative Service Awards:   | \$20,000.00         |
| 12 Minus Settlement Administration Costs:                      | \$5,750.00          |
| 13 Minus PAGA payment to the LWDA:                             | \$15,000.00         |
| 14 <b>NSA:</b>                                                 | <b>\$267,583.33</b> |

|                                                            |                   |
|------------------------------------------------------------|-------------------|
| 15 Settlement Class Members                                | 48                |
| 16 <b>Average Individual Payment: NSA/Settlement Class</b> | <b>\$5,574.65</b> |

17 After deducting amounts for the Court-approved attorneys' fees and verified costs, Service  
18 Awards to Plaintiffs, Settlement Administrator costs, and the PAGA payment to the LWDA the  
19 Settlement results in a Net Settlement Amount ("NSA") of at least \$267,583.33 to be paid out to all  
20 Settlement Class Members who do not timely opt out. Lidman Decl., ¶ 13, Exh. 2.

21 Therefore, this calculation of  $\$267,583.33/48 = \$5,574.65$ , assumes the Court approves the  
22 requested attorneys' fees, maximum attorneys' costs, service payments, settlement administration costs,  
23 and payment to the LWDA. *Id.* This calculation also assumes that all 48 putative class members  
24 participate in the settlement and do not submit timely requests for exclusions. *Id.*

25  
26 <sup>2</sup> "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order  
27 Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the  
28 following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment;  
or (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of  
appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the  
Judgment and issues a remittitur. Settlement, ¶ 1.18.

1                   3.       Class Representatives Service Payments

2           Incentive awards are typical in class action cases and are intended to compensate class  
3 representatives for work done on behalf of the class and to make up for reputational risk undertaken in  
4 bringing the action.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

5           Plaintiffs will separately apply for service payments at the time of seeking final approval in the  
6 amount of \$10,000.00 each – or total \$20,000.00. Lidman Decl., ¶ 33, Exh. 2 (Settlement, ¶ 3.2.1.);  
7 Toro Decl., ¶¶ 3-12; Escobar Decl., ¶¶ 3-12. As will be fully briefed at the time of final approval,  
8 Plaintiffs’ requested service awards are intended to recognize the time and effort they expended on  
9 behalf of the Settlement Class, including providing substantial factual information and documents to  
10 Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at  
11 issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the  
12 named plaintiffs in this case, and the fact that Plaintiffs have agreed to a general release of all claims  
13 subject to a waiver of Civil Code § 1542. See Lidman Decl., ¶33; Toro Decl., ¶¶ 3-8; Escobar Decl.,  
14 ¶¶ 3-12; Settlement ¶ 3.2.1. Plaintiffs also prepared for and sat for their depositions prior to mediation.

15           The Class Representative Service Payments awarded by the Court shall be paid by the  
16 Settlement Administrator to Plaintiffs from the Gross Settlement Amount within 14 calendar days after  
17 Defendants fund the Gross Settlement Amount. Settlement, ¶ 4.4.

18                   4.       Attorneys’ Fees and Costs

19           California courts recognize an appropriate method for awarding attorneys’ fees in class actions  
20 is to award a percentage of the “common fund” created as a result of a settlement. See *e.g., Laffitte v.*  
21 *Robert Half Int’l, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 506. Class Counsel’s request for fees of one-third of the  
22 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common  
23 fund settlements.

24           Here, Class Counsel will also apply for an attorneys’ fees award of one-third of the GSA, which  
25 is currently estimated to be \$166,666.67, and up to \$25,000.00 in verified costs reimbursement. See  
26 Settlement, ¶ 3.2.2.; Lidman Decl., ¶31. Plaintiffs submit the requested fee is fair compensation for  
27 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.  
28 *Id.* Further, Plaintiffs have provided written approval of the split of attorneys’ fees in this action.

Lidman Decl., ¶ 32. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research, preparing for and defending the depositions of Plaintiffs, analyzing payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 31. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class Members, preparing the final approval papers, and attending the Final Approval hearing. *Id.*

Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the Settlement Administrator to Class Counsel from the Gross Settlement Amount 14 calendar days after Defendants fund the Gross Settlement Amount. Settlement, ¶ 4.4.

5. Payroll Taxes

The Settlement provides that Defendants' payroll taxes shall be paid separate and in addition to the Gross Settlement Amount. Settlement ¶¶ 3.1 and 4.3.

6. Payment Formula

There were approximately 48 total Class Members as of the date of mediation. Lidman Decl., ¶ 14.

An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4. Thus, the average Individual Class Payment is \$5,574.65.

Additionally, there were approximately 39 Aggrieved Employees. Lidman Decl., ¶ 14.

The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

Thus, the average Individual PAGA Payment is projected to be approximately **\$128.21**. *Id.*

1                   7.     Tax Allocation

2             Ninety Percent (90%) of each Participating Class Member's Individual Class Payment will be  
3 allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax  
4 withholding and will be reported on an IRS W-2 Form. Ten Percent (10%) of each Participating Class  
5 Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties  
6 (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be  
7 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for  
8 any employee taxes owed on their Individual Class Payment. Settlement, ¶ 3.2.5.

9                   8.     PAGA Penalty

10            The parties have agreed to a PAGA award of \$20,000.00 and in accordance with California  
11 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties  
12 – or \$15,000.00. Settlement ¶ 3.2.5. This \$15,000 represents roughly 42% of the \$35,770 estimated  
13 realistic exposure on PAGA. It is also approximately 3% of the \$500,000 Gross Settlement Amount  
14 and is in line with the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re*  
15 *M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at \*1 (S.D. Cal. Apr. 13,  
16 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom Comm'n Cases*, 186 Cal. App.  
17 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under  
18 which no money was allocated to the PAGA claims).

19           **VI.     NOTICE ADMINISTRATION**

20               **A.       SETTLEMENT ADMINISTRATOR**

21            Phoenix Class Action Administration Solutions ("Phoenix") costs are estimated not to exceed  
22 \$5,750.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary  
23 Approval filed concurrently herewith ("Lawrence Decl."). This request is reasonable in light of the  
24 proposed class size of approximately 48 Class Members and the costs and expenses associated with  
25 administering the notices and distributing the awards. Additionally, Phoenix will translate the Class  
26 Notices and mail them in both English and Spanish to Class Members.

27            Phoenix has extensive experience administering class action matters. Phoenix has administered  
28 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,  
ERISA and PAGA class action matters, though final approval and distribution. Phoenix has developed

1 a system of quality assurance measures, to ensure the highest quality service is provided in our cases  
2 and to class members. Lawrence Decl., ¶ 5.

3 **B. CLASS LIST FROM DEFENDANT**

4 No later than 20 calendar days after entry of an order preliminarily approving the Settlement,  
5 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft  
6 Excel spreadsheet. Settlement, ¶ 4.2. To protect Class Members' privacy rights, the Administrator must  
7 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for  
8 no other purpose, and restrict access to the Class Data to Administrator employees who need access to  
9 the Class Data to effect and perform under this Agreement. *Id.*

10 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

11 Before mailing Class Notices, the Administrator shall update Class Member addresses using the  
12 National Change of Address database. Settlement, ¶ 7.4.2. Using best efforts to perform as soon as  
13 possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send  
14 to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS")  
15 mail, the Class Notice with Spanish translation. *Id.*

16 **D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

17 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it  
18 advises Class Members of the nature of the claims, basic contentions and denials of the parties, and the  
19 key terms of the Settlement, the 60-day deadline to opt-out or object to the Settlement and the  
20 procedures by which to do so, explains the recovery formula and expected recovery amount for each  
21 Class Member, provides them the opportunity to contest their total workweeks included in the notice,  
22 and advises them that they will be bound by the terms of the Settlement if they do not opt-out. See  
23 Settlement, Exh. A. The proposed Class Notice will also notify Class Members of the final approval  
24 hearing date and provides Class Members the contact information for Class Counsel and advises Class  
25 Members that they may enter an appearance through counsel if they wish to. This manner of giving  
26 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of  
27 reaching Settlement Class Members.

28 Moreover, the Class Notice includes the sentence "To receive your check, you should

1 immediately notify the Administrator if you move or otherwise change your mailing address.”

2 **E. PROCESSING OF PAYMENTS**

3 Within 14 calendar days after SES fully funds the Gross Settlement Amount, the Administrator  
4 will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA  
5 Payment, the Administration Expenses Payment, the Class Counsel Fee Award, the Class Counsel  
6 Litigation Expenses Payment, and the Class Representatives Service Payments. Disbursement of the  
7 Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class  
8 Representatives Service Payments shall not precede disbursement of Individual Class Payments and  
9 Individual PAGA Payments. Settlement, ¶ 4.4. Before mailing any checks, the Settlement  
10 Administrator must update the recipients’ mailing addresses using the National Change of Address  
11 Database. Settlement, ¶ 4.4.1.

12 **F. UNDELIVERABLE SETTLEMENT NOTICES**

13 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by  
14 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address  
15 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall  
16 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address  
17 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice  
18 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

19 The Administrator will send checks for Individual Settlement Payments to all Participating Class  
20 Members (including those for whom Class Notice was returned undelivered). The Administrator will  
21 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating  
22 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was  
23 returned undelivered). Settlement, ¶ 4.4.1.

24 **VII. RESPONSES TO SETTLEMENT NOTICE**

25 **A. REQUESTS FOR EXCLUSION**

26 Class Members who wish to exclude themselves from (or opt-out of) the Settlement’s release of  
27 class action claims must send the Administrator, by fax, email, or mail, a signed written Request for  
28 Exclusion no later than the Response Deadline – i.e., 60 days after the Administrator mails the Class  
Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request

1 for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates  
2 the Class Member's choice to be excluded from the Settlement and includes the Class Member's name,  
3 address, and email address or telephone number. To be valid, a Request for Exclusion must be timely  
4 faxed, emailed, or postmarked by the Response Deadline. Settlement, ¶ 7.5.1.

#### 5 **B. RE-MAILED NOTICES**

6 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay  
7 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days  
8 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The  
9 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.  
10 Settlement, ¶ 7.4.4.

#### 11 **C. OBJECTION PROCEDURES**

12 Only Participating Class Members may object to the class action components of the Settlement  
13 and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested  
14 for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class  
15 Representative Service Payment. Settlement, ¶ 7.7.1.

16 Participating Class Members may send written objections to the Administrator, by fax, email,  
17 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to  
18 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class  
19 Member who elects to send a written objection to the Administrator must do so not later than the  
20 Response Deadline – *i.e.* 60 days after the Administrator's mailing of the Class Notice (plus an  
21 additional 14 days for Class Members whose Class Notice was re-mailed after having been returned as  
22 undeliverable). Settlement, ¶ 7.6.2.

### 23 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

24 The face of each check shall prominently state the date (not less than 180 days after the date of  
25 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the  
26 void date. Settlement ¶ 4.4.1.

27 For any Class Member whose Individual Class Payment check or Individual PAGA Payment  
28 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds  
represented by such checks to the California Controller's Unclaimed Property Fund in the name of the

1 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of  
2 Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

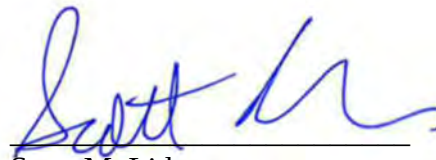
3 **IX. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve  
5 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order  
6 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

7  
8 Dated: September 4, 2024

Respectfully submitted,  
LIDMAN LAW, APC

9  
10 By:



11 Scott M. Lidman  
12 Attorney for Plaintiffs  
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