

1 **BIBIYAN LAW GROUP, P.C.**

2 Vedang J. Patel (SBN 328647)

3 *vedang@tomorrowlaw.com*

4 Keaton D. Mendoza (SBN 321172)

5 *kmendoza@tomorrowlaw.com*

6 1460 Westwood Boulevard

7 Los Angeles, California 90024

8 Tel: (310) 438-5555; Fax: (310) 300-1705

9 Attorneys for Plaintiff, FIDENCIO PEREZ,
10 an individual and on behalf of all others similarly situated.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

13 FIDENCIO PEREZ, an individual and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 CALO COSTA MESA LLC, a California
18 limited liability company; CALO LAGUNA
19 NIGUEL, LLC, a California limited liability
20 company; CALO EL SEGUNDO LLC, a
21 California limited liability company; and
22 DOES 1 through 100, inclusive,
23 Defendants.

Case No.: 24STCV18135

[Assigned for All Purposes to the Hon.
Laura A. Seigle in Dept. 17]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

1 This Court, having considered the Motion of plaintiff Fidencio Perez ("Plaintiff") for
2 Preliminary Approval of Class and Representative Action Settlement and Provisional Class
3 Certification for Settlement Purposes Only ("Motion for Preliminary Approval"), the Declarations
4 of Vedang J. Patel, David D. Bibiyan, Fidencio Perez and Sean Hartranft, the Class and PAGA
5 Action Settlement Agreement ("Settlement," "Agreement" or "Settlement Agreement"), the
6 proposed Notice of Proposed Class Action Settlement and Date for Final Approval Hearing ("Class
7 Notice"), and other documents submitted in support of the Motion for Preliminary Approval, hereby
8 **ORDERS, ADJUDGES AND DECREES THAT:**

9 1. The definitions set out in the Settlement Agreement are incorporated by reference
10 into this Order; all terms defined therein shall have the same meaning in this Order.

11 2. The Court certifies the following settlement class ("Settlement Class," "Settlement Class
12 Members," "Class Members") for the purpose of settlement only: all non-exempt employees
13 employed by Defendants Calo Costa Mesa LLC; Calo Laguna Niguel, LLC; and Calo El Segundo
14 LLC in California during the period from July 19, 2020 through September 5, 2025 ("Class Period").

15 3. The "Aggrieved Employees are defined as all non-exempt employees employed by
16 Defendants Calo Costa Mesa LLC; Calo Laguna Niguel, LLC; and Calo El Segundo LLC at any
17 time during the period from June 27, 2023 through September 5, 2025 ("PAGA Period").

18 4. The Court preliminarily appoints the named plaintiff Fidencio Perez ("Plaintiff") as Class
19 Representative, and David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., as Class
20 Counsel.

21 5. The Court preliminarily approves the proposed class settlement upon the terms and
22 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
23 settlement appears to be within the range of reasonableness of settlement that could ultimately be
24 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
25 amount is fair, adequate, and reasonable as to all potential class members when balanced against the
26 probable outcome of further litigation relating to liability and damages issues. It further appears that
27 extensive and costly investigation and research has been conducted such that counsel for the parties
28 at this time are reasonably able to evaluate their respective positions. It further appears to the Court

1 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
2 delay and risks that would be presented by the further prosecution of the Action. It further appears
3 that the settlement has been reached as the result of intensive, non-collusive and arms-length
4 negotiations utilizing an experienced third-party neutral.

5 6. The Court approves, as to form and content, the Class Notice that has been submitted
6 herewith.

7 7. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to
8 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The
9 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies
10 with the requirements of law and appears to be the best notice practicable under the circumstances.

11 8. The Court hereby preliminarily approves the definition and disposition of the Gross
12 Settlement Amount of \$475,000.00, which is inclusive of: attorneys' fees of up to 35% of the Gross
13 Settlement Amount, which, if not escalated pursuant to the Agreement, amounts to \$166,250.00, in
14 addition to actual costs incurred of up to \$25,000.00; service award of up to \$10,000.00 to Plaintiff;
15 costs of settlement administration of no more than \$6,500.00 ; and Private Attorneys General Act
16 of 2004 ("PAGA") penalties in the amount of \$47,500.00, of which \$35,625.00 (75%) will be paid
17 to the Labor and Workforce Development Agency ("LWDA") and \$11,875.00 (25%) to the
18 Aggrieved Employees.

19 9. The Gross Settlement Amount expressly excludes Employer's Share of Payroll
20 Taxes, which will be paid separately and apart by Defendants on the wages portion of the Gross
21 Settlement Amount.

22 10. Class Member's "Pay Period" shall mean any pay period during which a Class
23 Member worked for Defendants, for at least one day during the Class Period, based on hire dates,
24 re-hire dates (as applicable), and termination dates (as applicable).

25 11. The Parties estimate that there are approximately 10,000 PAGA Pay Periods worked
26 by non-exempt hourly employees of Defendants in California during PAGA Period (from June 27,
27 2023, to June 5, 2025). Should the actual number of PAGA Pay Periods worked by this group of
28 people during the PAGA Period increase beyond 10%, Defendants shall have the option of (1)

1 increasing the Gross Settlement Amount by the percentage increase in the number of PAGA Pay
2 Periods worked by the Aggrieved Employees above 10% (e.g. if the number of PAGA Pay Periods
3 increases by 11%, the Total Settlement Amount will increase by 1%); or (2) rolling back the end of
4 the Class and PAGA Release periods to the date in which 11,000 pay periods is met. Defendant
5 shall make its election no later than 30 days following full execution of this Agreement. Should
6 Defendant fail to make its election within that timeframe, option (2) shall be presumed chosen.

7 12. The Court deems Apex Class Action LLC ("Apex" or "Settlement Administrator"),
8 the settlement administrator, and preliminarily approves payment of administrative costs, not to
9 exceed \$6,500.00 out of the Gross Settlement Amount for services to be rendered by Apex on behalf
10 of the class.

11 13. Not later than twenty-one (21) days after the Court grants Preliminary Approval of
12 the Settlement, Defendants will deliver the Class Data to the Administrator in the form of a
13 Microsoft Excel spreadsheet. "Class Data" means Class Member's identifying information in
14 Defendants' possession including the Class Member's name, last-known mailing address, Social
15 Security number, hire dates, termination dates (as applicable) and re-hire dates (as applicable).

16 14. To protect Class Members' privacy rights, the Administrator must maintain the Class
17 Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose,
18 and restrict access to the Class Data to Administrator's employees who need access to the Class
19 Data to effect and perform under this Agreement.

20 15. Before mailing Class Notices, the Administrator shall update Class Members' addresses
21 using the National Change of Address database.

22 16. Using best efforts to perform as soon as possible, and in no event later than fourteen
23 (14) days after receiving the Class Data, the Administrator will send to all Class Members identified
24 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with
25 Spanish translation.

26 17. "Response Deadline" means forty-five (45) days after the Administrator mails Notice
27 to Class Members and Aggrieved Employees and shall be the last date on which Class Members
28 may: (a) fax, email or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail

1 his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after
2 having been returned undeliverable to the Administrator shall have an additional fifteen (15) days
3 beyond the Response Deadline has expired.

4 18. Class Members who wish to exclude themselves (opt-out of) the Class Settlement
5 must send the Administrator, by mail, a signed written Request for Exclusion not later than 45 days
6 after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
7 Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
8 representative that reasonably communicates the Class Member's election to be excluded from the
9 Settlement and includes the Class Member's name, address, and email address or telephone number.
10 To be valid, a Request for Exclusion must be timely postmarked by the Response Deadline.

11 19. Every Class Member who does not submit a timely and valid Request for Exclusion
12 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
13 bound by all terms and conditions of the Settlement, including the Participating Class Members'
14 Releases under the Agreement, regardless of whether the Participating Class Member actually
15 receives the Class Notice or objects to the Settlement.

16 20. Only Participating Class Members may object to the class action components of the
17 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
18 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment
19 and/or Class Representative Service Payment. Participating Class Members may send written
20 objections to the Administrator by mail. In the alternative, Participating Class Members may appear
21 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
22 Hearing. A Participating Class Member who elects to send a written objection to the Administrator
23 must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an
24 additional 15 days for Class Members whose Class Notice was re-mailed).

25 21. If a Settlement Class Member submits an Objection and a Request for Exclusion, the
26 Request for Exclusion will control, and the Objection will be disregarded.

27 22. Each Class Member shall have 45 days after the Administrator mails the Class Notice
28 (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the

1 number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the
2 Class Notice. The Class Member may challenge the allocation by communicating with the
3 Administrator via mail.

4 23. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts
5 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the
6 Administrator no later than 14 days after the Effective Date.

7 24. For any Class Member whose Individual Class Payment check or Individual PAGA
8 Payment check is uncashed and cancelled after the void date (i.e., 180 days after the date of mailing)
9 the Administrator shall transmit the funds represented by such checks to the California State
10 Controller's Office, Unclaimed Property Fund.

11 25. All papers filed in support of final approval, including supporting documents for
12 attorneys' fees and costs, shall be filed by _____.

13 26. A Final Approval Hearing shall be held with the Court on _____
14 at ____:____.m in Department 17 of the above-entitled Court to determine: (1) whether the proposed
15 settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the
16 amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award
17 to the Class Representative; (4) the amount to be paid to the Settlement Administrator; and (5) the
18 amount to be apportioned to PAGA and/or paid to the LWDA and Aggrieved Employees.

19
20 **IT IS SO ORDERED.**

21
22 Dated: _____

Judge of the Superior Court