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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

MICHAEL MCGEE, Wael Kanafani,
DAVID URIBE, ZACHARY MCGORDON,
KATIE ROSAS, TERESA RAU, and
IMMANUEL PASCUAL, individuals, on
behalf of themselves, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

MITRA VI, LLC, an Arizona limited liability
company; DENALI MIDCO 2 LLC, a
Delaware limited liability company; and

Case No: 37-2022-00044660-CU-OE-CTL

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL**

DOES 1-50, Inclusive,
Defendants

1 WHEREAS, Plaintiffs Wael Kanafani, David Uribe, Michael McGee, Zachary McGordon,
2 Immanuel Pascual, Katie Rosas, and Teresa Rau (collectively, “Plaintiffs”) have applied to this Court
3 for an order preliminarily approving the settlement of this Action in accordance with a Joint Stipulation
4 of Class and PAGA Representative Action Settlement and Release (the “Settlement” or “Settlement
5 Agreement”), which, together with the exhibits thereto, sets forth the terms and conditions for a
6 proposed settlement and dismissal of the pending Action with prejudice upon the terms and conditions
7 set forth therein; and

8 WHEREAS, the Court has read and considered the Plaintiffs’ Motion for Preliminary
9 Approval, the Parties’ Settlement Agreement and the exhibits and declarations thereto;

10 NOW, THEREFORE, IT IS HEREBY ORDERED:

11 1. This Order incorporates by reference the definitions in the Settlement Agreement, and
12 all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
13 Agreement.

14 2. The Court has jurisdiction over the Action and all acts within the Action, and over all
15 the Parties to the Action, including Plaintiffs, Class Members, Defendants, and the State of California.

16 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
17 Defendant shall pay is Eight Hundred Sixty Thousand Dollars and Zero Cents (\$860,000.00). It
18 appears to the Court on a preliminary basis that the Settlement is fair, adequate and reasonable. Indeed,
19 the Court recognizes the value of the monetary recovery provided to all Class Members and finds that
20 such recovery is fair, adequate and reasonable when balanced against further litigation related to
21 liability and damages issues. It appears that the Parties have conducted significant investigation,
22 formal and informal discovery, research and litigation such that Class Counsel and Defense Counsel
23 are able to reasonably evaluate their respective positions at this time. It further appears to the Court
24 that the proposed Settlement, at this time, will avoid substantial additional costs by all Parties, as well
25 as avoid the risks and delay inherent to further prosecution of the Action. It also appears that the
26 Parties reached the Settlement as the result of intensive, serious and non-collusive, arms-length
27 negotiations facilitated by an experienced and neutral mediator. Thus, the Court finds on a preliminary
28 basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement

1 that could ultimately be given final approval by this Court. Accordingly, the Motion for Preliminary
2 Approval of Class Action Settlement is hereby **GRANTED**.

3 4. For purposes of this Settlement only, the Court hereby conditionally certifies a class of
4 Class Members, consisting of all current and former California employees of Defendants classified as
5 exempt Site Managers during the Class Period and all current and former California employees of
6 Defendants classified as a non-exempt, hourly employees during the Class Period. The “Class Period”
7 is the period from November 4, 2018, through February 13, 2025, as set forth in the Settlement Agreement.
8 Should for whatever reason the Settlement not become final, the fact that the Parties were willing to
9 stipulate to certification of the Class as part of the Settlement shall have no bearing on, nor be
10 admissible in connection with, the issue of whether a class should be certified in a non-settlement
11 context.

12 5. The rights of any potential dissenters to the proposed Settlement are adequately
13 protected in that they may exclude themselves from the Settlement of the Released Class Claims, or
14 they may object to the Settlement of the Claims and appear before this Court. However, to do so they
15 must follow the procedures outlined in the Settlement Agreement and Notice of Settlement.

16 6. The Court finds that the notice of settlement that Plaintiffs provided to the California
17 Labor and Workforce Development Agency (“LWDA”) satisfies the notice requirements of the
18 California Private Attorneys General Act (“PAGA”).

19 7. The Court approves, as to form and content, the proposed Notice of Settlement to Class
20 Members and finds that the method selected for communicating the preliminary approval of the
21 Settlement to Class Members is the best notice practicable under the circumstances, constitutes due
22 and sufficient notice to all persons entitled to notice, and therefore satisfies due process

23 8. For Settlement purposes only, the Court hereby appoints Plaintiffs Wael Kanafani,
24 David Uribe, Michael McGee, Zachary McGordon, Immanuel Pascual, Katie Rosas, and Teresa Rau
25 as the class representatives in this Action. Further, the Court preliminarily approves a Service Award
26 to Plaintiffs not to exceed Ten Thousand Dollars (\$10,000) for each Plaintiff.

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1 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of JCL Law Firm, APC,
2 Shani O. Zakay, Esq. of Zakay Law Group, APLC, and Erik K. Yaeckel, Esq. of Sullivan & Yaeckel
3 Law Group, APC, as Class Counsel for the Class Members.

4 10. Plaintiffs seek a Class Counsel Award in the amount not of not more than Three
5 Hundred Sixteen Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$316,666.67),
6 comprised of one-third of the Total Settlement Amount for attorney's fees, currently estimated to be
7 Two Hundred Eighty-Six Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents
8 (\$286,666.67), and litigation expenses not to exceed Thirty Thousand Dollars and Zero Cents
9 (\$30,000.00), and proposed Service Award of not more than Ten Thousand Dollars and Zero Cents
10 (\$10,000.00) to each Plaintiff (or \$70,000.00 total). While these awards appear to be within the range
11 of reasonableness, the Court will not approve the Class Counsel Award, and Service Award until the
12 Final Approval Hearing.

13 11. The Court hereby appoints APEX Class Action, LLC as the Settlement Administrator
14 to administer the Notice of Settlement pursuant to the terms in the Settlement Agreement.

15 12. No later than 10 business days after the entry of the Preliminary Approval Order,
16 Defendants shall provide the Settlement Administrator with the Class Information (as defined in the
17 Settlement Agreement). No later than 14 calendar days after receipt of the Class Information, the
18 Settlement Administrator shall use the Class Information to mail the Notice of Settlement to Class
19 Members after conducting a national change of address search and a skip trace for the most current
20 address of all former employee Class Members and will update such addresses as necessary.

21 13. No later than 45 calendar days after the date the Settlement Administrator mails the
22 Notice of Settlement to Class Members (*i.e.*, the Response Deadline), any Class Member requesting
23 exclusion from the Settlement must submit his/her Request for Exclusion by mail to the Settlement
24 Administrator as instructed in the Notice of Settlement. If the Court finally approves this Settlement,
25 Class Members who fail to submit a timely and valid Request for Exclusion on or before the Response
26 Deadline shall be Participating Class Members bound by all terms of the Settlement and the Final
27 Approval Order entered in this Action. To be valid, the Request for Exclusion: (1) must contain the
28 full name, address, and last four digits of the social security number or employee number of the person

1 requesting exclusion; (2) must be hand signed by the person requesting exclusion; and (3) must state
2 in substance: “I wish to exclude myself from the Settlement in the action titled *Kanafani and Rosas*
3 *et. al. v. Denali Midco 2 LLC et al.*, Superior Court of California, County of San Diego, Lead Case
4 No. 37-2022-00044660-CU-OE-CTL (consolidated with San Diego Superior Court Case No. 37-
5 2022-00046807). I understand that by requesting to be excluded, I will receive no money from the
6 Class Action Settlement.” Any Class Members who submits a timely and valid Request for Exclusion
7 from the Class will not be entitled to any monetary recovery under the Settlement (except for their
8 prorated portion of the PAGA Award, if applicable) and will not be bound by the terms of the
9 Settlement as it relates to the Released Class Claims (except for the release of the PAGA claims, which
10 will bind all PAGA Employees regardless of whether they submit a Request for Exclusion). Any
11 Class Members who submits a timely and valid Request for Exclusion from the Class will not have
12 any right to object, appeal or comment on the Settlement.

13 14. No later than 45 calendar days after the Response Deadline, any Class Member wishing
14 to object or comment upon the Settlement must appear at the Final Approval Hearing and/or submit
15 her/his Notice of Objection by filing it with the Court or mailing it to the Court as instructed in the
16 Notice of Settlement. Class Members who fail to submit a timely and valid Notice of Objection and/or
17 appear at the Final Approval Hearing to object shall be deemed to have waived any objections and
18 shall be foreclosed from making any objections to the Settlement.

19 15. A Motion for Final Approval Hearing shall be held on _____ at
20 _____ (a.m./p.m.), in the San Diego County Superior Court, Department C-71, located at 330
21 W. Broadway, San Diego, CA 92101, to consider the fairness, adequacy and reasonableness of the
22 proposed Settlement, including without limitation the: Class Counsel Fees Award, Class Counsel
23 Costs Award, Plaintiffs’ Service Awards, PAGA Award, Settlement Administration Costs, and
24 Individual Settlement Payments to Participating Class Members. A Motion for Class Counsel Award
25 and Service Awards shall also be held before this Court on _____ at _____ (a.m./p.m.),
26 in Department C-71 of the San Diego County Superior Court. All papers in support of the Motion For
27 Final Approval and the motion for Class Counsel Award and Service Awards shall be filed with the
28 Court and served on all counsel no later than 16 days prior to the Final Approval Hearing.

1 16. This Settlement is not a concession or admission and shall not be used against
2 Defendants or any of the Released Parties as an admission or indication with respect to any claim of
3 any fault or omission by Defendants or any of the Released Parties. Whether the Settlement is finally
4 approved, neither the Settlement, nor any document, statement, proceeding or conduct related to the
5 Settlement, nor any reports or accounts thereof, shall in any event be: (a) construed as, offered or
6 admitted in evidence as, received as or deemed to be evidence for any purpose adverse to the Released
7 Parties, including, but not limited to, evidence of a presumption, concession, indication or admission
8 by Defendants or any of the Released Parties of any liability, fault, wrongdoing, omission, concession
9 or damage; or (b) disclosed, referred to, or offered or received in evidence against any of the Released
10 Parties in any further proceeding in the Action, or in any other civil, criminal or administrative action
11 or proceeding, except for purposes of enforcing the Settlement. The Court's findings are for purposes
12 of conditionally certifying the class of Class Members in the context of this Settlement and will not
13 have any claim or issue or evidentiary preclusion or estoppel effect in any other action against
14 Defendants or any of the Released Parties or in this litigation if the Settlement is not finally approved.
15 If for any reason the Court does not execute and file a Final Approval Order, or if the Effective Date,
16 as defined in the Settlement Agreement, does not occur for any reason whatsoever, the Settlement
17 Agreement and all evidence and proceedings had in connection therewith shall be without prejudice
18 to the *status quo ante* rights of the Parties to the Action, as more specifically set forth in the Settlement
19 Agreement, and this Preliminary Approval Order shall be rendered null and void and shall be vacated.

20 17. Pending further orders of this Court, all proceedings in this matter except those
21 contemplated in this Preliminary Approval Order and in the Settlement Agreement are stayed.

22 18. The Court expressly reserves the right to adjourn or continue the Final Approval
23 Hearing from time to time without further notice to Class Members.

24 **IT IS SO ORDERED.**

25
26 Dated: _____

HONORABLE GREGORY POLLACK
JUDGE OF THE SUPERIOR COURT