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5 Attorneys for Plaintiff Emy Johnston
(Additional attorneys for Parties stated on the
6 following page)

7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 EMY JOHNSTON, on behalf of herself,
11 and all others similarly situated, and as
12 an “aggrieved employee” on behalf of
13 other “aggrieved employees” under the
Labor Code Private Attorneys General
14 Act of 2004,

15
16 *Plaintiff,*

17 vs.

18
19 HERTZ LOCAL EDITION CORP., a
20 Delaware corporation; and DOES 1
through 50, inclusive,

21 *Defendant.*

Case No. 2:17-cv-01966-JAM-EFB

**STIPULATION OF CLASS
SETTLEMENT AND RELEASE
BETWEEN PLAINTIFF AND
DEFENDANT**

Judge: John A. Mendez

Action Filed: August 10, 2017

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ADDITIONAL ATTORNEY FOR PLAINTIFF

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Attorneys for Defendant
HERTZ LOCAL EDITION CORP.

1 This Joint Stipulation and Settlement Agreement (herein after “Stipulation,”
2 “Settlement,” or “Settlement Agreement”) is entered by and between Plaintiff Emy
3 Johnston (“Johnston” or “Plaintiff”) on the one hand, and Defendant Hertz Local
4 Edition Corp. (“HLEC” or “Defendant”), a Delaware Corporation, on the other
5 hand, subject to the terms and conditions hereof and the approval of the Court.
6 Johnston and HLEC are referenced collectively herein as “the Parties.”

7 **I. BACKGROUND AND RECITALS**

8 **Case Background**

9 1. On August 10, 2017, Johnston filed a class action lawsuit in the
10 Superior Court of Nevada County, Case No. CU17-082392 (the “Action”), alleging
11 five causes of action for 1) Unpaid minimum and overtime wages (Lab.
12 Code §§ 510, and 1194); 2) Failure to provide meal periods and rest breaks;
13 3) Failure to indemnify (Lab. Code § 2802; 4) Wage Statement Penalties (Lab.
14 Code § 226); 5) Waiting Time Penalties (Lab. Code §§ 201 - 203); and 6) Unfair
15 Competition (Bus. & Prof. Code §§ 17200, et seq.). On August 23, 2017, Plaintiff
16 filed a First Amended Complaint, adding a single cause of action for Civil
17 Penalties (Lab. Code §§ 2698, et seq.) under the Private Attorney General Act
18 (“PAGA”). On September 25, 2017, HLEC removed the Action to United States
19 District Court for the Eastern District of California, Case No. 2:17-cv-01966-JAM-
20 EFB.

21 2. The Parties have engaged in discovery, including discovery related to
22 putative class size and potential exposure, and discovery produced in connection
23 with the Parties’ mediation efforts. Class Counsel has thoroughly investigated the
24 facts relating to the claims alleged and analyzed the applicable legal principles to
25 the claims asserted against HLEC.

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28 ///

1 **The Settlement**

2 3. On August 27, 2019, the Parties participated in a mediation before
3 Kelly Knight, Esq. This full-day mediation session resulted in the present
4 Settlement Agreement between the Parties.

5 4. Based upon Class Counsel’s discovery, investigation, and legal
6 evaluation, and taking into account the sharply contested legal and factual issues
7 involved and assessment of the uncertainties of complex litigation and the relative
8 benefits conferred upon the Settlement Class pursuant to this Settlement
9 Agreement, Class Counsel has concluded that a settlement with HLEC, on the
10 terms set forth in this Settlement Agreement, is fair, reasonable, adequate and in
11 the best interests of Johnston and the Settlement Class.

12 5. HLEC denied, and continues to deny, the allegations in the Action in
13 their entirety. HLEC has asserted defenses to the claims alleged in the Action and
14 expressly denies each of the claims asserted against it and any and all liability
15 arising out of the conduct alleged. HLEC contends, specifically, that it has
16 complied at all times with the California Labor Code, and the California Business
17 and Professions Code, and that it paid Johnston and Settlement Class Members all
18 wages, reimbursed them for all expenses, and made any other payments owing to
19 them under applicable federal and state law. In addition, HLEC denies that, if the
20 case were to proceed, any class could be certified.

21 6. HLEC has concluded that further defense of this Action would be
22 protracted and expensive. Substantial amounts of HLEC’s time, energy and
23 resources have been expended, and unless this settlement is made, will continue to
24 be expended in defense of the claims asserted in this Action. HLEC has, therefore,
25 agreed to settle in the manner and upon the terms set forth in this Settlement
26 Agreement to put to rest the claims as set forth in the Action. The Parties
27 specifically agree that the agreement of HLEC to settle this matter is not, and shall
28 not be construed as, an admission of any wrongdoing whatsoever by HLEC against

1 Johnston and/or the other Settlement Class Members.

2 NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the
3 undersigned, that this Action shall be settled, subject to the approval of the Court,
4 pursuant to the following terms and conditions:

5 **II. DEFINITIONS**

6 7. As used in this Settlement Agreement, the following terms shall have
7 the following meanings:

8 a. “Action” means the civil action titled *Johnston v. Hertz Local*
9 *Edition Corp.*, once pending in the Superior Court of Nevada County, Case No.
10 CU17-082392, and now pending in the United States District Court for the Eastern
11 District of California, Case No. 2:17-cv-01966-JAM-EFB.

12 b. “Authorized Claimants” means those Settlement Class
13 Members who do not timely opt out of the Settlement.

14 c. “Claims Administrator” means Phoenix Class Action
15 Administration Solutions (“Phoenix”), the entity that Class Counsel recommended
16 and the parties have selected to administer this Settlement and to act as the third-
17 party administrator to process the Settlement under the terms of this Settlement
18 Agreement.

19 d. “Claims Administration Costs” means the fees and costs
20 incurred or charged by the Claims Administrator in connection with the execution
21 of its duties under this Settlement Agreement including, but not limited to: (i) fees
22 and costs associated with preparing, issuing, and/or monitoring reports, filings and
23 notices (including the cost of printing and mailing all notices and other documents
24 to the Settlement Class) required to be prepared in the course of administering the
25 Settlement; (ii) computing the amount of the Settlement Awards, and any other
26 payments to be made under this Settlement Agreement; (iii) handling inquiries
27 about the calculation of individual Settlement Awards; (iv) establishing and
28 operating a Settlement payment center address, and phone number to receive

1 inquires about the Settlement; and (v) preparing and issuing any tax forms required
2 under the law and/or pursuant to this Settlement Agreement and preparing and
3 submitting any filings required by any governmental taxing authority or other
4 governmental agency.

5 e. “Class Counsel” means David G. Spivak of the The Spivak
6 Law Firm and Walter Haines of the United Employees Law Group.

7 f. “Class List” means the list to be provided to the Class
8 Administrator, which consists of the first and last names, last-known addresses,
9 telephone numbers, dates of employment, number of workweeks, and full social
10 security numbers of the Settlement Class Members.

11 g. “Class Notice” means the Notice of Proposed Class Action
12 Settlement to be sent to the Settlement Class Members after the Court
13 preliminarily approves the terms contained in this Settlement Agreement,
14 informing them of the material terms of the agreement, why they are receiving the
15 Class Notice, and what their options are with respect to the Settlement.
16 The proposed Class Notice is attached as Exhibit A to this Settlement Agreement.

17 h. “Class Released Claims” means any and all claims to be
18 released by the Class Members who do not opt out of the settlement consisting of
19 all claims that were or could have been alleged based on the facts alleged in the
20 Operative Complaint, including, but not limited to, any corresponding or related
21 PAGA claims, for the Settlement Class Period, including the date of preliminary
22 approval of this proposed Settlement under any state or local law, and shall
23 specifically include, but is not limited to, claims for (1) Unpaid minimum and
24 overtime wages (e.g., Lab. Code §§ 510, and 1194); (2) Failure to provide meal
25 periods and rest breaks (e.g., Lab. Code §§ 226.7, 512 and 1198;
26 (3) Unreimbursed expenses (e.g., Lab. Code § 2802); (4) Wage Statement Penalties
27 (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code §§ 201 - 203);
28 (6) Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); (7) Civil Penalties

1 (Lab. Code § 2698, *et seq.*) under the Private Attorney General Act (“PAGA”);
2 (8) violation of Labor Code section 226.7 (for rest breaks); and (9) any similar
3 claims and any related statutory and/or civil penalties, which were alleged or could
4 have been alleged based on the facts of the Operative Complaint.

5 i. “Complaint” or “Operative Complaint” means the original
6 complaint filed on August 10, 2017 in this Action, with case number CU17-
7 082392 and removed to federal court as case number 2:17-cv-01966-JAM-EFB,
8 and including the amendments contained in the First Amended Complaint.

9 j. “Counsel for Defendant” means Richard Bromley, Esq. of
10 Constangy, Brooks, Smith & Prophete, LLP, 2029 Century Park East, Suite 1100,
11 Los Angeles, California 90067, Telephone: 310-909-7775, Facsimile: 424-465-
12 6630 and Robert A. Dolinko, Esq. of Nixon Peabody, LLP, One Embarcadero
13 Center, 18th Floor, San Francisco, California 94111-3600, Telephone: (415) 984-
14 8200, Facsimile: (415) 984-8300.

15 k. “Court” means the United States District Court of the Eastern
16 District of California in which the Action is currently pending, the Honorable John
17 A. Mendez presiding, and located at the Robert T. Matsui United States
18 Courthouse, 501 I Street, Courtroom 6, Sacramento, California 95814. Court shall
19 also mean any other Court with proper jurisdiction of this Action.

20 l. “Defendant” means Hertz Local Edition Corp.

21 m. “Effective Date” means ten (10) business days after either (a) if
22 no objections are timely filed, the Final Approval Date; (b) if objections are filed
23 but no appeal is filed, the expiration date of the time for filing notice of any appeal
24 from Final Approval Date; or (c) if an appeal is filed, the latest of (i) the date of
25 final affirmance of an appeal of that Final Approval Order, (ii) the expiration of the
26 time for a petition for review or writ of certiorari with respect to the Final
27 Approval Order and, if review or certiorari is granted, the date of final affirmance
28 of the Final Approval Order following review pursuant to that grant; or (iii) the

1 date of final dismissal of any appeal from the Final Approval Order or the final
2 dismissal of any proceeding on review or certiorari with respect to the Final
3 Approval Order that has the effect of confirming the Final Approval Order.

4 n. “Final Approval Date” means the date of entry of the Order
5 granting final approval of this Settlement Agreement.

6 o. “Final Approval Order” means the Order granting final
7 approval of this Settlement.

8 p. “Final Judgment” or “Judgment” means the judgment entered
9 into by the Court pursuant to the terms set forth in this Settlement Agreement
10 finally and fully giving effect to the terms contained in this Agreement.

11 q. “Gross Settlement Amount” means the total amount of five
12 hundred and fifty thousand dollars (\$550,000) to be paid by Defendant pursuant to
13 the terms of this Settlement Agreement in full satisfaction of all claims arising
14 from this Action, and which includes all individual settlement amounts to the
15 Settlement Class Members, Representative Plaintiff’s Incentive Award, Class
16 Counsel Fees, Class Counsel’s Costs, Claims Administrator’s Costs, and the
17 portion for the PAGA Payment payable to the LWDA. Defendant will separately
18 pay any employer payroll taxes required by law, including, but not limited to, the
19 employer FICA, FUTA, and SDI contributions.

20 r. “Incentive Award” means the payment to Representative
21 Plaintiff Johnston for her service to the Settlement Class and in consideration for
22 her agreement not to seek employment with HLEC in any capacity at any time and
23 her execution of the Personal Release contained herein, which is in addition to
24 whatever payment she is otherwise entitled to as an Authorized Claimant.

25 s. “Net Settlement Amount” (“NSA”) means the portion of the
26 Gross Settlement Amount after deducting Class Counsel Fees, Class Counsel
27 Costs, Incentive Award to Representative Plaintiff, Claims Administrator Costs,
28 and the portion for the PAGA Payment payable to the LWDA. Defendant will

1 separately pay any employer payroll taxes required by law, including, but not
2 limited to, the employer FICA, FUTA, and SDI contributions. The NSA will be
3 distributed to Settlement Class Members.

4 t. “Notice Packet” means a pre-paid self-addressed return
5 envelope that will include the Class Notice and Opt-Out Form to all Settlement
6 Class Members via first-class mail, postage prepaid, using the most current mailing
7 address information available contained in the Class List.

8 u. “Opt-Out Form” means a request for exclusion from the
9 proposed class action settlement form that will be mailed out in the Notice Packet
10 to all Settlement Class Members.

11 v. “Opt-out Period” means the 45 calendar-day period after the
12 mailing of the Notice Packets to the Settlement Class Members during which the
13 Settlement Class Members can timely opt out of the Settlement Class.

14 w. “PAGA Payment” means the portion of the Gross Settlement
15 Amount the Parties have agreed to allocate to settle the claims for civil penalties
16 under the California Private Attorneys’ General Act (“PAGA”).

17 x. “Parties” means Johnston and HLEC.

18 y. “Personal Release” means the Representative Plaintiff Emy
19 Johnston’s irrevocable and unconditional release, acquittal, and discharge of the
20 Released Persons and all persons and/or corporate entities acting by, through,
21 under or in concert with any of them, or any of them, from any and all Class
22 Released Claims and any and all existing claims, demands, suits, actions, causes of
23 action, obligations, agreements, contracts, promises, liabilities, debts,
24 compensation, damages, losses, costs, expenses, and attorneys’ fees, of any and
25 every kind, nature or character, known or unknown, suspected or unsuspected,
26 actual or potential, absolute or contingent, pending or anticipated, which arise out
27 of, are based upon, are by reason of, relate to, or in any way involve Johnston’s
28 employment with HLEC, including the termination thereof, including, but not

1 limited to, those arising under any federal, state, or local law, regulation or
2 ordinance, contract, quasi-contract, the common law, public policy, or any
3 constitution, such as, without limitation, the California Constitution; the California
4 Labor Code, including Labor Code Section 132a; Family Medical Leave Act;
5 California Family Rights Act; Title VII of the Civil Rights Act of 1964 (42 U.S.C.
6 § 2000e); the California Fair Employment and Housing Act (Cal. Govt. Code
7 § 12900 *et seq.*); the Private Attorneys General Act of 2004 pursuant to *Arias v.*
8 *Superior Court* (2009) 46 Cal. 4th 969; Americans with Disabilities Act; Older
9 Workers Benefit Protection Act; Age Discrimination in Employment Act;
10 Consolidated Omnibus Budget Reconciliation Act of 1985; Employee Retirement
11 Income Security Act of 1974, Civil Code section 51 *et seq.*; Wage Orders of the
12 California Industrial Welfare Commission; the California Code of Regulations; the
13 California Business and Professions Code; Fair Labor Standards Act; and claims of
14 intentional infliction of emotional distress; defamation and/or libel, or any other
15 damage to reputation claims; breach of implied contract or for claims of a breach
16 of the covenant of good faith and fair dealing, as well as any other express or
17 implied covenant; or any other statute or common law principle of similar effect,
18 known or unknown, which the person giving this release now has, owns, or holds,
19 or claims to have, own or hold, or which said person at any time heretofore had,
20 owned, or held, or claimed to have, own, or hold or which said person at any time
21 hereinafter may have, own, or hold, or claim to have, own, or hold, against each or
22 any of the Released Persons, arising from acts, events, or circumstances occurring
23 on or before the effective date of this Agreement. Representative Plaintiff
24 acknowledges and agrees that this Agreement includes her release of claims for
25 disputed wages pursuant to Labor Code Section 206.5.

26 With respect to claims released in this Section, the Representative Plaintiff
27 expressly waives the benefits of California Civil Code § 1542. Civil Code §1542
28 provides:

1 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
2 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
3 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
4 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
5 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**
6 **HER SETTLEMENT WITH THE DEBTOR.**

6 Notwithstanding the provisions of section 1542, and for the purpose of
7 implementing a complete release and discharge of the claims in the Personal
8 Release, Representative Plaintiff Johnston expressly acknowledges that this
9 Agreement is intended to include in its effect all claims which she does not know
10 of or suspect to exist in her favor at the time of execution hereof and that this
11 agreement contemplates the extinguishment of all such claims.

12 z. “Preliminary Approval Motion” means the motion that will be
13 filed by Plaintiff to obtain the Court’s preliminary approval of this Settlement and
14 proposed Class Notice to be mailed out to the Settlement Class Members.

15 aa. “Preliminary Approval Order” means the order preliminarily
16 approving the settlement terms contained in this Agreement.

17 bb. “Qualified Settlement Fund Account” means the account into
18 which the Claims Administrator will transfer the Gross Settlement Amount
19 pursuant to Internal Revenue Code Section 1.468B-1.

20 cc. “Released Parties” means (i) HLEC; and (ii) HLEC’s past,
21 present, or future subsidiaries, divisions, predecessors, successors and assigns,
22 officers, agents, employees, advisors, insurers, attorneys, executors, administrators,
23 servants, owners, shareholders, bondholders, directors, partners, attorneys, and any
24 parent organizations (including but not limited to The Hertz Corporation and Hertz
25 Global Holdings, Inc.), subsidiaries, successors in interest, and/or representatives.

26 dd. “Representative Plaintiff” or “Johnston” means Emy Johnston.

27 ee. “Settlement Agreement” or “Agreement” means this agreement
28 and all exhibits attached to it.

1 ff. “Settlement Award” means the gross payment to any
2 Settlement Class Member pursuant to the terms of this Settlement Agreement.

3 gg. “Settlement Class” is the class consisting of all Settlement
4 Class Members described below who were employed by Defendant in California at
5 any time during the Settlement Class Period. It includes Branch Managers, District
6 Managers and/or Territory Managers (collectively “Branch Managers”) described
7 in paragraph hh below.

8 hh. “Settlement Class Member” means (1) the approximately 15
9 Branch Managers employed by HLEC in California, including Plaintiff, who
10 (during certain weeks within the Settlement Class Period) were paid less than the
11 minimum salary amount required to be exempt from overtime from August 2013 to
12 the present (the “Salary Subclass”); and the approximately 129 Branch Managers,
13 District Managers and/or Territory Managers employed by HLEC in California,
14 including Plaintiff, who (according to company records during certain weeks
15 within the Settlement Class Period) supervised or managed less than two (2) full-
16 time employees, or the equivalent part-time employees at any time from August
17 10, 2013 to the present (the “Under Supervised Subclass”) (hereafter the two
18 groups are referred to collectively as the “Class Members”).

19 ii. “Settlement Class Period” means from August 10, 2013 through
20 the date of the Court’s order preliminarily approving this Settlement.

21 jj. “Settlement Fairness Hearing” or “Final Approval Hearing”
22 means the hearing to be requested by the Parties and conducted by the Court,
23 following appropriate notice to the Settlement Class and an opportunity for
24 Settlement Class Members to exclude themselves from the Settlement Class and
25 the proposed settlement, at which time the Parties will request the Court to approve
26 the fairness, reasonableness and adequacy of the terms and conditions of the
27 proposed settlement and this Settlement Agreement and to enter a Final Approval
28 Order and Final Judgment.

1 **III. SETTLEMENT FUND AND SETTLEMENT AWARD**
2 **CALCULATION**

3 8. Gross Settlement Amount.

4 a. HLEC shall pay the Gross Settlement Amount of Five Hundred
5 Fifty Thousand Dollars and Zero Cents (\$550,000.00) to settle this Action.

6 b. Deposit. Within thirty (30) business days after the Effective
7 Date, HLEC shall deliver to the Claims Administrator the Gross Settlement
8 Amount. Immediately upon receipt by the Claims Administrator, the Gross
9 Settlement Amount shall be transferred into a Qualified Settlement Fund Account.
10 No Party shall have any further obligation or liability for any payment under this
11 Settlement Agreement to Johnston or to the Settlement Class Members.

12 c. Disbursement by Claims Administrator. All disbursements shall
13 be made from the Qualified Settlement Fund Account. The Claims Administrator
14 shall be the only entity authorized to make withdrawals or payments from the
15 Qualified Settlement Fund Account. All payments to Authorized Claimants shall
16 be made in a single distribution by the Claims Administrator (except for checks
17 that are returned, which are addressed further below).

18 d. Interest. Any interest on the funds deposited by HLEC will
19 inure pro rata once paid out to the party to whom the underlying funds are
20 ultimately paid out.

21 e. Payroll Taxes. The Gross Settlement Amount will not cover
22 HLEC's share of employer-side payroll taxes, including FICA, FUTA, SDI, UE,
23 on the Settlement Awards paid to Settlement Class Members to the extent required
24 by law. HLEC will pay such taxes in addition to the Gross Settlement Amount.

25 9. Incentive Award, Class Counsel Fees and Costs, Costs of
26 Administration, and PAGA Payment. Subject to Court approval and for purposes
27 of effectuating this Settlement Agreement, the following amounts shall be paid by
28 the Claims Administrator from the Gross Settlement Amount:

1 a. Incentive Award. Subject to Court approval and in exchange for
2 Johnston's release of all claims in the Personal Release, Johnston's agreement not
3 to seek re-employment with HLEC (as described below), Johnston's covenant not
4 to sue (as described below), and in addition to her individual Settlement Award as
5 a member of the Settlement Class, fifteen thousand dollars (\$15,000) will be set
6 aside from the Gross Settlement Amount for Johnston's efforts in bringing and
7 prosecuting this matter. The Qualified Settlement Fund Account shall issue an IRS
8 Form 1099 for this payment. The Claims Administrator shall pay the Incentive
9 Award approved by the Court from the Gross Settlement Amount within ten (10)
10 business days of deposit of the Gross Settlement Amount. Any amounts not
11 approved by the Court as an Incentive Award up to the amounts set forth in this
12 paragraph shall be added back to the NSA to be distributed to the Settlement Class
13 Members. Johnston shall not appeal the Court's decision on this subject.

14 i. Johnston's Agreement Not To Seek Employment With
15 HLEC. Johnston agrees not to seek employment or re-employment with HLEC in
16 any capacity at any time.

17 ii. Johnston's Covenant Not to Sue. Johnston covenants and
18 agrees not to ever assert a claim released by the Personal Release, or to commence,
19 join in, or voluntarily assist in a lawsuit or adversary proceeding against the
20 Released Parties, or any of them, arising out of or regarding the claims released by
21 Personal Release set forth above.

22 b. Class Counsel Fees and Costs. Class Counsel shall make a
23 motion for reasonable attorneys' fees and costs incurred by Class Counsel. The
24 reasonable attorneys' fees requested by Class Counsel shall not exceed one third
25 (33.33%) of the Gross Settlement Amount, or one hundred and eight three
26 thousand three hundred and thirty three dollars (\$183,333). These amounts will
27 compensate Class Counsel for work already performed in this case and all of the
28 work remaining to be performed in this case, including but not limited to

1 documenting the Settlement Agreement, securing Court approval of the Settlement
2 Agreement, making sure that the Settlement Agreement is fairly administered and
3 implemented, obtaining final judgment of the action, and addressing any appeals or
4 further proceedings that may occur. Class Counsel's Costs/Expenses
5 reimbursement request shall not exceed twenty five thousand dollars (\$25,000).

6 i. HLEC and its attorneys agree not to oppose any
7 application or motion by Class Counsel for attorneys' fees and costs up to those
8 amounts set forth herein, so long as any such application or motion is consistent
9 with the provisions of this Settlement Agreement, and Class Counsel agrees not to
10 petition the Court for any additional payments for fees, costs, or interest.

11 ii. The Claims Administrator shall pay the attorneys' fees
12 and costs approved by the Court, as set forth above from the Gross Settlement
13 Amount within ten (10) business days of deposit of the Gross Settlement Amount
14 pursuant to paragraph 9(b) above. Any amounts not approved by the Court in
15 attorneys' fees and costs up to the amounts set forth in paragraph 9(b) above shall
16 be added back to the NSA to be distributed to the Settlement Class Members

17 iii. The attorneys' fees and costs approved by the Court shall
18 constitute full satisfaction of HLEC's obligations to pay amounts to any person,
19 attorney, or law firm for attorneys' fees, expenses, or costs in this Action incurred
20 on behalf of Johnston and/or the Settlement Class, and shall relieve HLEC from
21 any other claims or liability to any other attorney or law firm for any attorneys'
22 fees, expenses, and/or costs to which any of them may claim to be entitled on
23 behalf of Johnston and/or the Settlement Class. Johnston further agrees that any
24 allocation of fees between or among Class Counsel and any other attorney
25 representing a Plaintiff and/or the Settlement Class shall be the sole responsibility
26 of Class Counsel, and Johnston agrees to hold harmless HLEC from any claim or
27 liability by any other party claiming or seeking to claim any attorneys' fees or
28 costs.

1 iv. An IRS Form 1099 shall be provided to Class Counsel
2 for the payments made to Class Counsel. Class Counsel shall be solely and legally
3 responsible to pay any and all applicable taxes on the payment made to Class
4 Counsel. HLEC makes no representations or warranties regarding the tax
5 consequences or obligations resulting from any payments made to Class Counsel.
6 Class Counsel agrees to hold harmless HLEC, the Claims Administrator, and the
7 Qualified Settlement Fund Account from any claim or liability for taxes, penalties,
8 or interest for which Class Counsel is responsible as a result of the payment or any
9 allocation of the payment made to Class Counsel.

10 c. Claims Administration Costs. Neither the Settlement Class
11 Members nor Class Counsel shall have any responsibility or liability with respect
12 to any administration costs incurred in connection with the administration of, and
13 the distribution from, the NSA. All fees, costs, and expenses by the Claims
14 Administrator pertaining to this Settlement Agreement shall be paid from the
15 Gross Settlement Amount as set forth in this Settlement Agreement in an amount
16 not to exceed, and are estimated to be, ten thousand dollars (\$10,000). Any
17 amounts not approved by the Court in Claims Administration Costs pertaining to
18 this Settlement Agreement up to the amount set forth in this paragraph shall be
19 added back to the NSA to be distributed to the Settlement Class Members. The
20 Parties agree to cooperate in the settlement administration process and to make all
21 reasonable efforts to control and minimize the costs and expenses incurred in the
22 administration of the Settlement Agreement. The Claims Administrator shall pay
23 itself the Claims Administration Costs approved by the Court within ten (10)
24 business days of the deposit of the Gross Settlement Amount.

25 d. PAGA Payment. The total PAGA Payment shall be ten
26 thousand dollars (\$10,000). Seventy-five percent (75%) of that total, in the amount
27 of seven thousand five hundred dollars (\$7,500), shall be paid to the State of
28 California Labor & Workforce Development Agency (“LWDA”). The remaining

1 twenty-five percent (25%), in the amount of two thousand five hundred dollars
2 (\$2,500), shall be added back to the NSA to be distributed to the Settlement Class
3 Members. The PAGA Payment to the LWDA shall be made within ten (10)
4 business days after the deposit of the Gross Settlement Agreement. As a result of
5 the Settlement Agreement, Settlement Class Members shall be deemed to no
6 longer be aggrieved employees for purposes of the PAGA.

7 10. Settlement Awards to Eligible Class Members. Solely for purposes of
8 effectuating this Settlement Agreement and in exchange for the release of the
9 Class Released Claims by the Settlement Class Members, Settlement Class
10 Members who do not timely opt out of the Settlement Agreement shall be paid a
11 Settlement Award from the NSA in the amount(s) calculated as follows: Each
12 Settlement Class Member will be paid a pro rata share of the NSA based on the
13 number of weeks he or she worked for HLEC during the Settlement Class Period,
14 divided by the total number of work weeks worked by all Settlement Class
15 Members during the Settlement Class Period. Each of the amounts in this section
16 is subject to change depending on the final tally of Settlement Class Members who
17 do not timely opt out of the Settlement Agreement.

18 a. The Claims Administrator shall be responsible for determining
19 eligibility for, and the amount of, the Settlement Awards to be paid. Settlement
20 Awards shall be paid to Settlement Class Members no later than ten (10) business
21 days after the deposit of the Gross Settlement Amount.

22 b. The Settlement Award shall be treated by all Parties as one half
23 (50%) non-wage penalties and interest, to be reported to the Settlement Class
24 Member on an IRS Form 1099, and shall not be subject to withholdings, and one
25 half (50%) wages, subject to withholdings, to be reported to the Settlement Class
26 Member on an IRS Form W-2. Settlement Class Members shall be solely and
27 legally responsible to pay any and all applicable taxes on the payment made to
28 them. HLEC makes no representations or warranties regarding the tax

1 consequences or obligations resulting from any payments made to Settlement Class
2 Members.

3 c. All eligibility and Settlement Award determinations shall be
4 based on personnel and payroll data that HLEC will make available as needed to
5 the Claims Administrator. Settlement Class Members shall have an opportunity to
6 dispute the personnel and payroll information reflected on the Class Notice as
7 reflected in Exhibit A. The Claims Administrator shall have the sole authority to
8 resolve any such disputes, and may consult with Class Counsel and HLEC's
9 counsel in doing so. Any Settlement Awards that are undeliverable to Settlement
10 Class Members pursuant to paragraph 18(f) shall be distributed to the *cy pres* fund
11 pursuant to subsection (d) of this paragraph.

12 d. All checks for Settlement Awards shall remain valid and
13 negotiable for one hundred eighty (180) days from the date of their issuance. The
14 Claims Administrator will include with the checks a letter stating that the check
15 must be cashed or deposited within 180 days. The funds represented by Settlement
16 Award checks returned as undeliverable and those Settlement Award checks
17 remaining un-cashed for more than 180 days after issuance shall be retained by the
18 Claims Administrator. Any checks that are not cashed or otherwise remain
19 unclaimed upon the expiration of that 180-day time period shall be distributed to
20 the State of California State Controller's Office Unclaimed Property Fund in the
21 name and for the benefit of the individual Class Member. If the Settlement
22 Administrator is unable to obtain a valid mailing address through this process, the
23 monies represented by the check shall be distributed to the State of California State
24 Controller's Office Unclaimed Property Fund in the name and for the benefit of the
25 individual Class Member.

26 e. The aggregate amount of the Settlement Awards to Settlement
27 Class Members shall not under any circumstances exceed the NSA.

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1 11. Taxes.

2 a. Withholding and Reporting Requirements. The Claims
3 Administrator shall be responsible for ensuring that all taxes associated with this
4 Settlement Agreement are timely paid to the appropriate tax authorities. The
5 Claims Administrator's responsibilities include the following: (i) filing all federal,
6 state, and local tax deductions, (ii) to timely and proper filing of all required
7 federal, state and local forms (e.g., IRS Form 1099's, W-2's, etc.) with the
8 appropriate taxing authorities, and (iii) completion of any other steps necessary for
9 compliance with any tax obligations of the Settlement under federal, state, and/or
10 local law, as applicable. To verify the Claims Administrator's compliance with the
11 foregoing withholding and reporting requirements, as soon as administratively
12 practicable, the Claims Administrator shall furnish Class Counsel and Counsel for
13 Defendant with copies of all forms detailing the payment of taxes (including all
14 1099 forms and returns) sufficient to prove that such payments were properly
15 remitted. The Claims Administrator shall provide a final accounting declaration
16 adequate to demonstrate full compliance with all duties set forth in this Settlement
17 Agreement, including, but not limited to, tax withholding, payment, and reporting
18 obligations.

19 b. Determination and Payment of Taxes. The Claims
20 Administrator shall determine the amount of any withholding or taxes to be
21 withheld from each Authorized Claimant's settlement payment and issue IRS
22 Form W-2's to the Settlement Class Members. All such withholdings shall be
23 remitted by the Claims Administrator to the proper governmental taxing
24 authorities. Each Settlement Class Member shall be responsible for any tax
25 consequences of any funds paid out to each Settlement Class Member pursuant to
26 this Settlement Agreement.

27 c. Circular 230 Disclaimer. Each party to this Settlement
28 Agreement (for purposes of this section, the "Acknowledging Party"; and each

1 party to this Settlement Agreement other than the Acknowledging Party, an “Other
2 Party”) acknowledges and agrees that (1) no provision of this Settlement
3 Agreement, and no written communication or disclosure between or among the
4 Parties or their attorneys and other advisors, is or was intended to be, nor shall any
5 such communication or disclosure constitute or be construed or be relied upon as,
6 tax advice within the meaning of United States Treasury Department Circular 230
7 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied
8 exclusively upon his, her, or its own, independent legal and tax advisers for advice
9 (including tax advice) in connection with this Settlement Agreement, (b) has not
10 entered into this Settlement Agreement based upon the recommendation of any
11 other party or any attorney or advisor to any other party, and (c) is not entitled to
12 rely upon any communication or disclosure by any attorney or adviser to any other
13 party to avoid any tax penalty that may be imposed on the Acknowledging Party;
14 and (3) no attorney or adviser to any other party has imposed any limitation that
15 protects the confidentiality of any such attorney’s or adviser’s tax strategies
16 (regardless of whether such limitation is legally binding) upon disclosure by the
17 Acknowledging Party of the tax treatment or tax structure of any transaction,
18 including any transaction contemplated by this Settlement Agreement.

19 12. Completion of and Report on Settlement Administration.

20 Administration of the Settlement Agreement shall be completed on or before the
21 eleventh business day after the deposit of the Gross Settlement Amount. Upon
22 completion of administration of the Settlement Agreement, the Claims
23 Administrator shall provide written certification of such completion and provide
24 proof of payment at the request of the Court and/or counsel for the Parties. The
25 Claims Administrator also shall furnish counsel for the Parties with a report
26 showing the amounts and dates of each payment.

27 13. Date of Distribution. In no event shall there be any distribution from
28 the Gross Settlement Amount until after the Effective Date.

1 **IV. RELEASES**

2 Pursuant to this Settlement, the Representative Plaintiff and Settlement
3 Class Members who do not timely and validly opt-out of this Settlement, and all
4 persons purporting to act on their behalf or purporting to assert a claim under or
5 through them, including, but not limited to their spouses, dependents, attorneys,
6 heirs and assigns, beneficiaries, devisees, legatees, executors, administrators,
7 trustees, conservators, guardians, personal representatives, and successors-in-
8 interest, whether individual, class, collective, representative, legal, equitable, direct
9 or indirect, or any other type or in any other capacity fully, finally, and forever
10 settle, compromise, and discharge the Released Parties of the Class Released
11 Claims and, for the Representative Plaintiff, of the claims in the Personal Release.
12 Upon the final approval by the Court of this Agreement and by operation of the
13 Agreement's terms, and except as to such rights or claims as may be created by
14 this Agreement, all Settlement Class Members who do not timely and validly opt-
15 out of this Settlement fully release and discharge the Released Parties from all
16 Class Released Claims during the Settlement Class Period.

17 The claims of putative class members described in Plaintiff's First Amended
18 Complaint or Complaint who are not Settlement Class Members or are not part of
19 the Settlement Class shall be dismissed without prejudice.

20 **V. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

21 14. Conditional Class Certification for Settlement Purposes Only. For
22 settlement purposes only, the Parties agree that the Settlement Class may be
23 certified. For purposes of settling this lawsuit only, the Parties stipulate and agree
24 that the requisites for establishing class certification with respect to the Settlement
25 Class Members as defined above have been and are met. The Parties agree that
26 evidence of this limited stipulation for settlement purposes only will not be deemed
27 admissible for any purpose in this action. It is the position of HLEC that if this case
28 were to be litigated, class certification would be inappropriate, *inter alia*, because

1 individualized issues would predominate and render any class trial unmanageable,
2 and that it would prevail on the merits. If the Settlement fails to be approved or
3 otherwise fails to be consummated for any reason whatsoever, including, but not
4 limited to, the Final Judgment not becoming final, then Defendant retains all rights
5 previously available to it, and any provisional certification of any class, or the
6 adoption of any procedure herein, shall be undone, shall be deemed null and void,
7 and the Parties shall be restored to their pre-Settlement status as if no Settlement
8 had been reached and no decisions were made pursuant to it.

9 15. Mutual Full Cooperation. The Parties agree to fully cooperate with
10 each other to accomplish the terms of this Settlement Agreement, including but not
11 limited to, execution of such documents and to take such other action as may
12 reasonably be necessary to implement the terms of this Settlement Agreement. The
13 Parties to this Settlement Agreement shall use their best efforts, including all
14 efforts contemplated by this Settlement Agreement, and any other efforts that may
15 become necessary by order of the Court, or otherwise, to effectuate this Settlement
16 Agreement and the terms set forth herein. As soon as practicable after execution of
17 this Settlement Agreement, Class Counsel shall, with the assistance and
18 cooperation of HLEC and its counsel, take all necessary steps to secure the Court's
19 preliminary and final approval of this Settlement Agreement.

20 16. Procedures. As part of this Settlement Agreement, the Parties agree to
21 the following procedures for requesting the Court's preliminary approval of the
22 Settlement Agreement, certifying the Settlement Class, notifying the Settlement
23 Class, requesting final Court approval of the Settlement Agreement, and
24 processing the Settlement Awards.

25 17. Preliminary Approval of the Settlement. Johnston will file with the
26 Court a motion for preliminary approval of this Settlement and provisional
27 certification of the Settlement Class within 45 calendar days of signing of this
28 Agreement. Such submissions will include such motions, pleadings and evidence

1 as may be required for the Court to determine that this Agreement is fair, adequate,
2 and reasonable, as required by Fed. R. Civ. P. 23. Such submission will also
3 include a Class Notice of Settlement for the Court to approve, which will then be
4 mailed to the Settlement Class Members. At least one week prior to filing the
5 motion, Plaintiff's counsel shall provide a draft of the motion to HLEC for review
6 and comment.

7 18. Class Notice. Subject to the approval of the Court, notice of the
8 Settlement Agreement shall be provided to the Settlement Class in the form of the
9 proposed Class Notice attached hereto as Exhibit A. The Parties believe and agree
10 that the following proposed procedures for notice provide the best practicable
11 notice to the Settlement Class:

12 a. As directed by the Court, the Claims Administrator shall be
13 responsible for preparing, printing, and mailing to all Settlement Class Members
14 the Class Notice and Opt-Out Form attached to this Settlement Agreement.

15 b. No later than 30 business days after the date of the entry of the
16 Preliminary Approval Order, and to the extent not already provided, HLEC shall
17 provide to the Claims Administrator the Class List.

18 c. Neither HLEC nor the Claims Administrator shall provide the
19 identification and/or financial information of Settlement Class Members to the
20 Class Representative, Class Counsel, any other Settlement Class Member, or to
21 any other person or entity. However, before the Claims Administrator sends the
22 Class Notice to Settlement Class Members as outlined below, it will advise the
23 Parties of the total number of Settlement Class Members and the total number of
24 workweeks on the Class List.

25 d. If HLEC and the Claims Administrator determine, based upon
26 further review of available data, that a person previously identified as being a
27 Settlement Class Member should not be so included, or if they identify a person
28 who should have been included as a Settlement Class Member but was not so

1 included, HLEC and the Claims Administrator shall promptly delete or add such
2 person as appropriate and immediately notify Class Counsel prior to such deletions
3 or additions (and the reasons therefore). All issues of this nature, and any challenge
4 by a Settlement Class Member regarding his or her Settlement Award, ultimately
5 will be resolved by the Claims Administrator prior to distribution of settlement
6 proceeds.

7 e. No later than 40 business days after the date of entry of the
8 Preliminary Approval Order, the Claims Administrator shall send a Notice Packet
9 to all Settlement Class Members via first-class mail, postage prepaid, using the
10 most current mailing address information available contained in the Class List.

11 f. Any Notice Packets returned to the Claims Administrator as
12 non-delivered before the expiration of the 45 calendar day period for Settlement
13 Class Members to mail Exclusion Forms shall be sent to the forwarding addresses
14 affixed thereto. If no forwarding address is provided for a Notice Packet that is
15 returned as non-delivered, then such Notice Packet will be re-sent by the Claims
16 Administrator after the address is updated using the following skip-trace
17 procedures: (1) run this Class List through the United States Postal Service's
18 National Change of Address database; and (2) perform address searches using
19 public and proprietary electronic resources which collect their data from various
20 sources such as utility records, property tax records, motor vehicle registration
21 records, and credit bureaus. Undelivered Notice Packets will be re-sent within five
22 (5) business days after the Claims Administrator receives notice that the Notice
23 Packet was undeliverable.

24 g. The objection deadline shall not be extended *pro-rata* for
25 members of the Settlement Class whose original notices are re-mailed pursuant to
26 paragraph 18(f).

27 19. Other than the obligations set forth in this Settlement Agreement,
28 Johnston, Class Counsel, HLEC, and the Claims Administrator shall have no

1 additional obligation to identify or locate any Settlement Class Member or have
2 any liability in connection with the provision of information to the Claims
3 Administrator or otherwise.

4 20. Requests for Exclusion (“Opt Outs”). The Class Notice shall provide
5 that Settlement Class Members who wish to exclude themselves from the
6 Settlement Agreement an Opt-Out Form, postmarked on or before the expiration of
7 the Opt-Out Period. Such written request for exclusion must contain all of the
8 information requested on the Opt-Out Form. The Opt-Out Form must be personally
9 signed by the Settlement Class Member who seeks to opt out. No opt-out request
10 may be made on behalf of more than one Settlement Class Member. The Opt-Out
11 Form must be sent by mail to the Claims Administrator and must be timely
12 postmarked as set forth above, except that the Claims Administrator may, upon
13 consultation with counsel for all Parties and good cause shown, extend the due date
14 for mailing the Opt-Out Form. The postmark date of the mailing envelope shall be
15 the exclusive means used to determine whether an Opt-Out Form has been timely
16 submitted and the Claims Administrator shall have the sole power to determine
17 timeliness or validity of an opt-out, but may confer with counsel for the Parties in
18 reaching that determination. Any Settlement Class Member who requests exclusion
19 (opts out) of the Settlement Agreement will not be entitled to any Settlement
20 Award and will not be bound by the Settlement Agreement or have any right to
21 object, appeal, or comment thereon.

22 21. Objections to Settlement. The Class Notice shall provide that those
23 members of the Settlement Class who wish to object to the Settlement Agreement
24 should mail a written statement of objection on or before the expiration of the Opt-
25 Out Period to the Claims Administrator. The postmark date of the mailing shall be
26 the exclusive means for determining that a Notice of Objection is timely. The
27 Notice of Objection should include the case name and the basis for the objection.
28 The Notice of Objection should be served on counsel for the Parties at least two (2)

1 weeks prior to the Settlement Fairness Hearing. Regardless of whether a Class
2 Member has complied with this recommended procedures, he/she will be permitted
3 to speak to the Court at the Settlement Fairness Hearing.

4 22. No Encouragement of Objections, Opt-Outs, or Appeals. At no time
5 shall any of the Parties or their counsel seek to solicit or otherwise encourage
6 members of the Settlement Class to opt-out, or appeal from the Final Approval
7 Order and Final Judgment.

8 23. Right to Rescission In Event of Excess Opt-Outs. Notwithstanding
9 any other provision of this Settlement Agreement, HLEC shall retain the right, in
10 the exercise of its sole discretion, to nullify the Settlement Agreement within ten
11 (10) business days of receipt of the Opt-Out Report as detailed in paragraph 24(b),
12 if Settlement Class Members representing more than five percent (5%) of the pay-
13 periods worked by the Settlement Class Members during the Settlement Class
14 Period opt out of the Settlement Agreement pursuant to paragraph 20 above. All
15 signatories and their counsel agree to refrain from encouraging opt-outs. The
16 Parties specifically agree not to solicit opt-outs, directly or indirectly through
17 anyone, through any means. In the event of such a rescission, no Party may use the
18 fact that any Party agreed to settle this case as evidence of HLEC's liability in this
19 lawsuit or the lack thereof, or that class certification is proper for any purpose other
20 than settlement. HLEC, however, shall remain liable for the cost of administration
21 to the extent such costs have been incurred prior to HLEC exercising this
22 termination right.

23 24. Reports by the Claims Administrator.

24 a. Weekly Reports. Starting on the date that the Claims
25 Administrator receives the Class List, the Claims Administrator shall provide
26 weekly reports to counsel for the Parties detailing the progress of the claims
27 process outlined herein.

28

1 b. Opt-Out Report by the Claims Administrator. No later than ten
2 (10) business days after the Opt-Out Period expires, the Claims Administrator shall
3 provide counsel for the Parties with a declaration setting forth: (a) due diligence
4 and proof of mailing of the Notice Packets; (b) the total amounts to be paid to the
5 Settlement Class; and (c) the total number of Settlement Class Members who filed
6 timely requests for exclusion or objections to the Settlement Agreement (“Opt-Out
7 Report”), along with the complete copies of all requests for exclusion and
8 objections received, including the postmark dates for each request for exclusion or
9 objection. The Parties can challenge the validity of any opt-out and the Claims
10 Administrator will be the sole arbiter of validity.

11 25. Motion for Final Approval. Johnston will file with the Court a motion
12 for final approval of this Settlement on or before 28 calendar days before the date
13 of the Settlement Fairness Hearing, which will be set by the Court. At least one
14 week prior to filing the motion, Plaintiff’s counsel shall provide a draft of the
15 motion to HLEC for review and comment.

16 26. Settlement Fairness Hearing. After expiration of the deadline for
17 requesting exclusion from or objecting to the Settlement Agreement, the Court
18 shall conduct a Settlement Fairness Hearing to determine final approval of the
19 Settlement Agreement along with the amounts properly payable for (i) attorneys’
20 fees and costs; (ii) the payment to Johnston for her time and effort in bringing and
21 prosecuting this matter, and (iii) the costs of administration of the Settlement
22 Agreement. Upon final approval of the Settlement Agreement by the Court at or
23 after the Settlement Fairness Hearing, the Parties shall present a final order to the
24 Court for its approval and entry. After entry of the Final Approval Order, the Court
25 shall have continuing jurisdiction for purposes of addressing (i) settlement
26 administration matters; (ii) such post-Final Approval Order matters as may be
27 appropriate under Court rules or as set forth in this Settlement Agreement; and (iii)

1 ruling on the stipulated request for Final Judgment of entire Action when all
2 aspects of the Settlement Agreement have been consummated.

3 **VI. FAILURE OF SETTLEMENT; APPELLATE REVIEW**

4 27. Invalid without Court Approval. This Settlement Agreement is subject
5 to approval by the Court. In the event it is not approved, it shall be deemed null
6 and void, of no force and effect, and of no probative value, and the Parties hereto
7 represent, warrant, and covenant that it will not be used or referred to for any
8 purpose whatsoever.

9 28. Effect of Revocation or Failure of Settlement. In the event that the
10 settlement does not become final for any reason, this Settlement Agreement shall
11 be null and void and any order entered by the Court in furtherance of this
12 Settlement shall be treated as void *ab initio*. In such a case, the Parties shall return
13 to the status quo as if the Parties had not entered into this Settlement Agreement.
14 The Claims Administrator will be paid by HLEC for its costs through the date it is
15 notified that the Settlement will not proceed.

16 29. Impact of Appellate Review. In the event an appeal is filed from any
17 of the Court's Orders, or any other appellate review is sought prior to the Effective
18 Date, administration of the Settlement Agreement shall be stayed pending final
19 resolution of the appeal or other appellate review, except that the Claims
20 Administrator will be paid by HLEC for its costs through the date it is notified that
21 the Settlement Agreement has been stayed by appellate review.

22 **VII. PARTIES' AUTHORITY**

23 30. The signatories hereto hereby represent that they are fully authorized
24 to enter into this Settlement Agreement and bind the Parties hereto to the terms and
25 conditions hereof.

26 31. No Signature Required by Settlement Class Members on Settlement
27 Agreement. Because the Settlement Class Members are so numerous, it is
28 impossible or impractical to have each one execute this Settlement Agreement. The

1 Class Notice, Exhibit A hereto, will advise all Settlement Class Members of the
2 binding nature of the release and such shall have the same force and effect as if this
3 Settlement Agreement were executed by each Settlement Class Member.

4 32. Agreement of Johnston. Johnston agrees not to object to or appeal any
5 of the terms of this Settlement Agreement. Should by Johnston violate the terms of
6 this paragraph, any such objection or appeal shall be deemed void and of no force
7 or effect.

8 **VIII. LIMITATIONS ON USE OF THIS SETTLEMENT**

9 33. No Admission of Liability or Wrongdoing. HLEC denies any and all
10 claims alleged in the Complaint and denies all wrongdoing and liability
11 whatsoever. HLEC maintains, among other things, that it has complied at all times
12 with the California Labor Code, and all applicable California and federal law. This
13 Settlement Agreement is not a concession or admission, and shall not be used
14 against HLEC as an admission or indication with respect to any claim of any fault,
15 concession or omission by HLEC. Whether or not the Settlement Agreement is
16 finally approved, neither the Settlement Agreement, nor any document, statement,
17 proceeding or conduct related to this Settlement Agreement, nor any reports or
18 accounts thereof, shall in any event be: (i) construed, offered or admitted in
19 evidence as, received as, or deemed to be, evidence for any purpose, including, but
20 not limited to, evidence of a presumption, concession, indication or admission by
21 HLEC of any liability, fault, wrongdoing, omission, concession or damage; or (ii)
22 disclosed or referred to for any purpose, or offered or received in evidence, in any
23 further proceeding in this lawsuit, or any other civil, criminal, or administrative
24 action or proceeding against HLEC except for purposes of settling this lawsuit
25 pursuant to this Settlement Agreement and for obtaining preliminary and final
26 approval thereof. The limitations set forth in this paragraph do not apply to any use
27 of this Settlement Agreement by the Parties to enforce this Settlement following
28 final approval by the Court.

1 34. No Impact on Employee Benefit Plan, Policy or Bonus Program.

2 HLEC contends that the amounts paid under this Settlement Agreement will not
3 affect any previously credited hours of service under any employee benefit plan,
4 policy, or bonus program sponsored by HLEC. To the extent permitted by the
5 terms of the Plan as such exists at the time of the payment, the amounts paid under
6 this Settlement Agreement will not form the basis for additional contributions to,
7 benefits under, or any other monetary entitlement under HLEC (self-insured or
8 not) employee benefit plans, policies, or bonus programs. Any payments made
9 under the terms of this Settlement Agreement shall not be applied retroactively,
10 currently, or on a going forward basis as salary, earnings, wages, bonuses,
11 commissions, or any other form of compensation for the purposes of any HLEC
12 employee benefit plan, policy, or bonus program. HLEC retains the right to modify
13 the language of its employee benefit plans, policies, and bonus programs to effect
14 this intent and to make clear that any amounts paid pursuant to this Settlement
15 Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any
16 similar measuring term as defined by applicable plans, policies, and bonus
17 programs for the purpose of eligibility, vesting, benefit accrual, or any other
18 purpose, and that additional contributions or benefits are not required by this
19 Settlement Agreement. Neither HLEC nor Johnston are opining on the terms of
20 any such plan, each of which speaks for itself.

21 35. Non-Disparagement: Johnston—including her attorneys, agents,
22 servants, employees, and representatives—shall refrain from making any
23 disparaging, derogatory, or otherwise negative comments or statements about the
24 Settlement Agreement or Released Parties to any person or entity, including, but
25 not limited to, any person affiliated in any way with any actual or potential
26 employee, contractor, customer, vendor or competitor of HLEC, any member of
27 the business community with whom HLEC has had or, to Johnston’s knowledge,
28

1 has contemplated a business or professional relationship, or any member of the
2 press.

3 36. No Publicity. Neither the Parties nor their counsel, without the prior
4 written approval of counsel for the other Party (which approval may be withheld in
5 a Party's sole discretion), shall issue, authorize, or contribute to the preparation or
6 dissemination of any press release or any other public statement or advertisement
7 (including but not limited to posting information on any counsel's website)
8 concerning this Agreement or any of its terms, or sponsor or participate in any
9 press conference, interview, media appearance, or other public discussion
10 concerning this Agreement or any of its terms. If the Parties or their counsel are
11 contacted by the press, media, or any industry association, they will respond only
12 that the case has been amicably resolved to the parties' mutual satisfaction. Any
13 violation of this provision by Johnston or Class Counsel shall entitle HLEC to
14 nullify the Settlement Agreement at any time before final court approval. The
15 Parties agree that, in the event of a breach of this provision, the non-breaching
16 party shall be entitled to reasonable attorneys' fees and costs incurred as a result of
17 that breach. The foregoing does not limit HLEC's right to enforce this provision
18 through an action for injunctive relief.

19 37. Various Proceedings Stayed. The Parties agree to stay all proceedings
20 in the class action, except such proceedings as may be necessary to implement and
21 complete the Settlement Agreement, pending the Settlement Fairness Hearing to be
22 conducted by the Court.

23 38. Use of HLEC's Data and Documents. Johnston and Class Counsel
24 agree that none of the documents provided to them by HLEC during the case or in
25 connection with the mediation or settlement shall be used for any purpose other
26 than the settlement of this action. Furthermore, should Johnston or her counsel
27 have any originals or copies of documents of HLEC, Johnston and her counsel
28

1 agree to destroy or return such originals and copies of documents via Class
2 Counsel upon the Effective Date of the Settlement Agreement.

3 **IX. MISCELLANEOUS**

4 39. No Assignment of Rights. Johnston warrants and represents that she
5 has not assigned, transferred, or hypothecated, or purported to assign, transfer, or
6 hypothecate to any person or entity any of the claims in the Personal Release or
7 any rights, claims, or causes of action arising out of those claims. This warranty
8 and representation of non-assignment shall survive the execution of this Settlement
9 Agreement and entry of judgment in the Action. No Settlement Award shall be
10 paid to any person or entity with respect to whom Johnston has assigned,
11 transferred, or hypothecated, or purported to assign, transfer, or hypothecate any of
12 the claims in the Personal Release or any rights, claims, or causes of action arising
13 out of those claims. In addition, Johnston shall defend, hold harmless, and
14 indemnify the Released Parties, or any of them, from and against any claims,
15 damages, litigation, causes of action, and expenses, including reasonable attorneys'
16 fees, resulting from any breach by Johnston of this warranty and representation, or
17 any breach by Johnston of her release of the claims in the Personal Release.

18 40. Construction. The Parties hereto agree that the terms and conditions of
19 this Settlement Agreement are the result of lengthy, intensive arms-length
20 negotiations between the Parties, and that this Settlement Agreement shall not be
21 construed in favor of or against any party by reason of the extent to which any
22 party or his, her, or its counsel participated in the drafting of this Settlement
23 Agreement.

24 41. Captions and Interpretations. Paragraph titles or captions contained
25 herein are inserted as a matter of convenience and for reference, and in no way
26 define, limit, extend, or describe the scope of this Settlement Agreement or any
27 provision hereof. Each term of this Settlement Agreement is contractual and not
28 merely a recital.

1 42. Modification. This Settlement Agreement may not be changed,
2 altered, or modified, except in writing and signed by the Parties hereto, and
3 approved by the Court. This Settlement Agreement may not be discharged except
4 by performance in accordance with its terms or by a writing signed by the Parties
5 hereto.

6 43. Integration Clause. This Settlement Agreement, along with any
7 exhibits attached hereto, constitutes the entire agreement between the Parties
8 relating to the settlement and transaction contemplated hereby, and the final,
9 complete and exclusive express of the terms and conditions of their agreement.
10 Any and all prior or contemporaneous agreements, understandings, representations,
11 and statements, whether oral or written and whether by a party or such party's legal
12 counsel, are hereby superseded and merged herein. No rights hereunder may be
13 waived except in writing.

14 44. Binding on Assigns. This Settlement Agreement shall be binding upon
15 and inure to the benefit of the Parties hereto and their respective heirs, trustees,
16 executors, administrators, successors, and assigns.


17 45. Enforcement. The Parties agree that following entry of the final
18 judgment, this Settlement Agreement shall be enforceable by the Court and the
19 Court shall retain exclusive and continuing jurisdiction of this action over all
20 Parties and Settlement Class Members to interpret and enforce the terms,
21 conditions, and obligations of the Settlement Agreement. This Settlement
22 Agreement may be pleaded or asserted by or on behalf of HLEC as a defense and
23 complete bar to any action or claim that may be brought against or involve HLEC
24 by anyone acting or purporting to act on behalf of Johnston and/or the Settlement
25 Class Members with respect to any matters within the scope of this Settlement
26 Agreement excepting only the obligations of the Parties under this Settlement
27 Agreement.

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1 46. Counterparts. This Settlement Agreement may be executed in
2 counterparts, and when each party has signed and delivered at least one such
3 counterpart, each counterpart shall be deemed an original, and, when taken
4 together with other signed counterparts, shall constitute one Settlement Agreement,
5 which shall be binding upon and effective as to all Parties. This Settlement
6 Agreement will become effective on the date when the last person signs and dates
7 it.

8 47. Governing Law. All terms of this Settlement Agreement and the
9 Exhibits hereto shall be governed by and interpreted according to the laws of the
10 State of California and the United States of America, where applicable.

11
12 Dated: December 19, 2019



Plaintiff Emy Johnston

13
14 January 16 2020
15 Dated: ~~December~~, 2019




Defendant Hertz Local Edition Corp.

Name: Dave Galainena
Title: EVP & General Counsel

16
17
18
19 Approved as to form:

20 January
Dated: December 16, 2019

CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP

21
22
23 By: 
Richard Bromley
24 Attorneys for Defendant
25 Hertz Local Edition Corp.

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27 **[SIGNATURES CONTINUE ON NEXT PAGE]**

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January 16, 2020

Dated: ~~December~~, 2019
RAD

NIXON PEABODY LLP

By: Robert A. Dolinko
Robert A. Dolinko
Attorneys for Defendant
Hertz Local Edition Corp.

Dated: December 12, 2019

THE SPIVAK LAW FIRM

By: David Spivak
David Spivak
Attorneys for Plaintiff
Emy Johnston

Dated: December ____, 2019

THE UNITED EMPLOYEES LAW GROUP

By: _____
Walter Haines
Attorneys for Plaintiff
Emy Johnston

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Dated: December ___, 2019

NIXON PEABODY LLP

By: _____
Robert A. Dolinko
Attorneys for Defendant
Hertz Local Edition Corp.


Dated: December ___, 2019

THE SPIVAK LAW FIRM

By: _____
David Spivak
Attorneys for Plaintiff
Emy Johnston

Dated: December 19, 2019

THE UNITED EMPLOYEES LAW
GROUP

By:  _____
Walter Haines
Attorneys for Plaintiff
Emy Johnston

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EXHIBIT A

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Notice of Proposed Class Action
United States District Court for the Eastern District of California

Johnston v. Hertz Local Edition Corp., Case No. 2:17-cv-01966-JAM-EFB

You May Be Entitled To Receive Money From A Class Action Settlement If You Are or Were A Branch Manager Of Hertz Local Edition Corp. In California Anytime From August 10, 2013 to _____ According to Hertz Local Edition Corp., it employed you during the period above for ____ workweeks. The total workweeks during this period for all Class Members is _____. You will receive an estimated payment of \$___ as your share of the Settlement.

A federal district court permitted this notice. This is not an advertisement.
You are not being sued. Your legal rights are affected, whether you act or not.

Hertz Local Edition Corp. will not retaliate against you regarding this settlement, whether you do nothing, ask to be excluded, or file an objection.

Please read this notice carefully.

WHAT IS IN THIS NOTICE

1. *Why Should You Read This Notice?*..... 1
2. *What Is The Case About?*..... 1
3. *What Is This Notice About?*..... 2
4. *Who Are The Parties in This Class Action?*..... 2
5. *Why Did Hertz Local Edition Corp. Join In This Notice?* 2
6. *Who Are The Attorneys Representing The Parties?*..... 2
7. *How Do I Receive Money From This Settlement?* 2
8. *Excluding Yourself From And/Or Objecting To The Settlement*..... 3
9. *Effect Of The Settlement*..... 3
10. *How Much Can I Expect To Receive?*..... 3
11. *How Will The Attorneys for the Class and Johnston be Paid?* 4
12. *Release* 4

1. Why Should You Read This Notice?

This notice tells of your rights to share in the settlement and your ability to “opt out” of, or object to, the settlement. There was a hearing on _____ in the United States District Court for the Eastern District of California, and Judge John A. Mendez directed that you receive this notice.

You have received this notice because records indicate that you are a Settlement Class Member in this lawsuit. The settlement will resolve all claims described below.

On _____, 2020, at _____m., the Court will hold a Final Approval Hearing concerning the proposed settlement in Courtroom 6 on the 14th floor of the Robert T. Matsui United States Courthouse, United States District Court for the Eastern District of California, 501 “I” Street, Sacramento, CA 95814.

2. What Is The Case About?

A putative class action lawsuit entitled *Emy Johnston v. Hertz Local Edition Corp.* was filed on August 10, 2017 in Nevada County Superior Court, Case No. CU17-082392 (the “Action”), alleging that Hertz Local Edition Corp. (“HLEC”) violated California law by failing to properly pay its Branch Managers for all overtime hours worked, failing to provide properly itemized wage statements, failing to timely pay employees upon termination, failing to provide rest breaks and meal periods, and failing to reimburse business expenses.

1 HLEC denies the allegations raised in the Action, and asserts that it did not violate the law and has no liability for any
2 of the Settlement Class Members' claims under any statute, wage order, regulation, common law, or equitable theory.
3 Plaintiff and HLEC disagree about whether a class can be certified. With the assistance of a professional mediator,
4 Plaintiff and HLEC agreed to a settlement to be paid on the terms set forth below.

5 **3. What Is This Notice About?**

6 You may be entitled to receive money from a settlement that has been reached in the lawsuit. The Court must finally
7 approve the terms of the settlement described below as fair and reasonable to the class. The settlement will affect all
8 members of the class, including you. This notice will explain the terms of the settlement and the amount of money
9 you may get.

10 **4. Who Are The Parties In This Class Action?**

11 Emy Johnston is the Plaintiff in this class action lawsuit, acting on behalf of herself and on behalf of certain current
12 and former HLEC Branch Managers in California. HLEC is the Defendant.

13 The "Settlement Class" is comprised of two groups: (1) the approximately 15 Branch Managers employed by HLEC
14 in California, including Plaintiff, who (during certain weeks within the Settlement Class Period) were paid less than
15 the minimum salary amount required to be exempt from overtime from August 2013 to _____ <<date the
16 date of the Court's order preliminarily approving this Settlement>> (the "Settlement Class Period"); and (2) the
17 approximately 129 Branch Managers, District Managers and/or Territory Managers employed by HLEC in California,
18 including Plaintiff, who (according to company records during certain weeks within the Settlement Class Period)
19 supervised or managed less than two (2) full-time employees, or the equivalent part-time employees at any time during
20 the Settlement Class Period..

21 You have been identified as a member of the Settlement Class.

22 **5. Why Did Hertz Local Edition Corp. Join In This Notice?**

23 The Court has not decided who should win this case. HLEC does not admit to any of the claims alleged in the Action.
24 HLEC denies the allegations in the Action, and denies that it owes money for any of the claims alleged in the Action.
25 HLEC is settling the Action as a compromise, in order to save attorneys' fees and costs and to avoid the uncertainties
26 of litigation. HLEC reserves the right to object to any claims made in the Action if for any reason the settlement fails.
27 The Court file has the settlement documents with more information on the Action.

28 **6. Who Are The Attorneys Representing The Parties?**

Attorneys for Plaintiff & the Class are:

The Spivak Law Firm
David G. Spivak
Caroline Tahmassian
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Toll Free: (877) 203-9010
Facsimile: (818) 582-2561
david@MyWorkMyWages.com

United Employees Law Group
Walter Haines
5500 Bolsa Ave., Suite 201
Huntington Beach, CA 92649
Telephone: (888) 474-7242
Facsimile: (562) 256-1006

Attorneys for Hertz Local Edition Corp. are:

Constangy, Brooks, Smith & Prophete, LLP
Richard E. Bromley
2029 Century Park East, Suite 1100
Los Angeles, CA 90067
Telephone: (310) 909-7775
Facsimile: (424) 465-6630
rbromley@constangy.com

Nixon Peabody LLP
Robert A. Dolinko
One Embarcadero Center, 32nd Floor
San Francisco, California 94111-3600
Telephone: (415) 984-8200
Facsimile: (415) 984-8300
rdolinko@nixonpeabody.com

7. How Do I Receive Money From This Settlement?

Class Counsel listed above represents you in connection with the settlement. You will automatically receive money
from the settlement if you do not submit a request to be excluded from the settlement. Your individual settlement

1 payment will be based on the information above. The deadline to request to be excluded from the settlement, or to
2 object to the settlement is _____.

3 **If you are a current HLEC employee, your decision as to whether or not to be excluded from the settlement
4 will not affect your employment with HLEC.**

5 **8. Excluding Yourself From And/Or Objecting To The Settlement.**

6 If you do not wish to be included in the settlement, you must mail to the Claims Administrator a request to be excluded
7 from the settlement postmarked no later than _____.

8 If you request to be excluded, you will receive **no money** from the settlement.

9 If you do nothing and do not request exclusion, following entry of judgment and exhaustion of appeals or other post-
10 judgment proceedings, the judgment entered by the Court will bind you and you will release the claims described
11 below. You will only receive money from the settlement if you do not request exclusion.

12 If you wish to object to the settlement, you should mail an objection that includes the case name and states why you
13 object to the settlement. Your objection should state your full name, address, and telephone number. The objection
14 should be mailed to the Claims Administrator at Johnston Class Action Settlement Claims Administrator,
15 _____ by _____, 2020. Regardless of whether you comply with this procedure, you may
16 appear at the final approval hearing to speak with the Court about the Settlement.

17 Do not call the Court.

18 If you properly object, you may also appear and discuss your objections with the Court and the Parties at the Final
19 Approval Hearing set for _____, 2020 at ____m. in Courtroom 6 on the 14th floor of the Robert T.
20 Matsui United States Courthouse, United States District Court for the Eastern District of California, 501 "I" Street,
21 Sacramento, CA 95814.

22 If the Court approves the settlement against your objection and you have not returned a request for exclusion from the
23 Settlement, you will receive a payment from the settlement.

24 **9. Effect Of The Settlement.**

25 If the proposed settlement is approved by the Court, a Judgment will be entered by the Court that will release HLEC
26 and HLEC's past, present, or future subsidiaries, divisions, predecessors, successors and assigns, officers, agents,
27 employees, advisors, insurers, attorneys, executors, administrators, servants, owners, shareholders, bondholders,
28 directors, partners, attorneys, and any parent organizations (including but not limited to The Hertz Corporation and
Hertz Global Holdings, Inc.), successors in interest, and/or representatives ("Released Parties") from all claims that
were or could have been alleged based on the facts alleged in the First Amended Complaint, including any
corresponding or related PAGA claims, for the Settlement Class Period. The "Class Released Claims" means any and
all claims to be released by the Class Members who do not opt out of the settlement consisting of all claims that were
or could have been alleged based on the facts alleged in the Operative Complaint, including, but not limited to, any
corresponding or related PAGA claims, for the Settlement Class Period, including the date of preliminary approval of
this proposed Settlement under any state or local law, and shall specifically include, but is not limited to, claims for
(1) Unpaid minimum and overtime wages (e.g., Lab. Code §§ 510, and 1194); (2) Failure to provide meal periods and
rest breaks (e.g., Lab. Code §§ 226.7, 512 and 1198); (3) Unreimbursed expenses (e.g., Lab. Code § 2802); (4) Wage
Statement Penalties (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code §§ 201 - 203); (6) Unfair Competition
(Bus. & Prof. Code §§ 17200, *et seq.*); (7) Civil Penalties (Lab. Code §§ 2698, *et seq.*) under the Private Attorney
General Act ("PAGA"); (8) violation of Labor Code section 226.7 (for rest breaks); and (9) any similar claims and
any related statutory and/or civil penalties, which were alleged or could have been alleged based on the facts of the
Operative Complaint.

If the settlement is approved and you do not request to be excluded, you will receive compensation and will be forever
barred from asserting the Settled Claims against the Released Parties.

10. How Much Can I Expect To Receive?

Your payment under the settlement will be calculated based on the number of weeks you worked for HLEC. This
Notice sets forth the number of work weeks that you worked for Defendant during the Settlement Class Period. The
Notice also provides an estimate of your share of the Settlement. This amount may decrease or increase without further

1 notice to you depending on orders by the Court. It is important that you carefully check and confirm the number of
workweeks during the period of August 10, 2013 through _____ and correct any inaccuracies in this Notice.

2 **11. How Will The Attorneys For The Class And Johnston Be Paid?**

3 The Gross Settlement amount is \$550,000. The attorneys for Johnston will be paid from the Gross Settlement Amount.
4 The attorneys have asked for an award of \$183,333, one third (33.33%) of the Gross Settlement Amount, in fees and
\$25,000 in costs, and will receive that award if their request is approved by the Court. If approved by the Court,
5 Plaintiff Emy Johnston will be paid from the Gross Settlement Amount an Incentive Award of \$15,000 for her service,
in addition to her individual Settlement Award pursuant to section 10 above.

6 **12. Release**

7 Upon final approval by the Court of the settlement, each Settlement Class Member who has not opted out of this
settlement shall release the Released Parties from the Settled Claims during the Settlement Class Period.

8 If you need more information or have any questions, you may call Class Counsel at the telephone numbers listed
above, you may call the Claims Administrator at the telephone number listed below, toll free, or visit
www.HLECSettlement.com. Please refer to the Johnston Class Action Settlement.

9 Johnston Class Action Settlement
10 Claims Administrator

11 _____
12 _____
13 _____

14 Please do not call the Court for information about this settlement.
15 Please do not contact HLEC's attorneys for information about this settlement.

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EXHIBIT B

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EMY JOHNSTON, on behalf of herself,
and all others similarly situated, and as
an “aggrieved employee” on behalf of
other “aggrieved employees” under the
Labor Code Private Attorneys General
Act of 2004,

Plaintiff,

vs.

HERTZ LOCAL EDITION CORP., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendant.

Case No.: 2:17-cv-01966-JAM-EFB

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Action August 10, 2017

filed:

Hearing: ___/___/2020 at ___:___

_.m.

Dept.:

6, Hon. John A.
Mendez

1 Plaintiff Emy Johnston’s (hereafter referred to as “Plaintiff”) Unopposed
2 Motion for Preliminary Approval of a Class Action Settlement (the “Motion”) was
3 heard before the Court, the Honorable John A. Mendez, Judge presiding. The Court
4 having considered the Motion, the Stipulation of Class Settlement and Release
5 Between Plaintiff and Defendant (“Settlement” or “Settlement Agreement”), and
6 supporting papers, HEREBY ORDERS THE FOLLOWING:

7 1. The Court grants preliminary approval of the Settlement and the
8 Settlement Class based upon the terms set forth in the Settlement filed in support of
9 the Motion. All capitalized terms used herein shall have the same meaning as
10 defined in the Settlement. The Court has determined there is sufficient evidence to
11 suggest that (a) the terms of the Settlement might be fair, adequate, and reasonable
12 to the Settlement Class and (b) the Settlement falls within the range of
13 reasonableness and appears to be presumptively valid, subject only to any
14 objections that may be raised at the final hearing and final approval by this Court.
15 The Court will make a determination at the hearing on the motion for final approval
16 of class action settlement (the “Final Approval Hearing”) of whether the Settlement
17 is fair, adequate and reasonable to the Settlement Class.

18 2. For purposes of this Preliminary Approval Order, the “Settlement
19 Class” means (1) the approximately 15 Branch Managers employed by HLEC in
20 California, including Plaintiff, who (during certain weeks within the Settlement
21 Class Period) were paid less than the minimum salary amount required to be exempt
22 from overtime from August 2013 to the present (the “Salary Subclass”); and (2) the
23 approximately 129 Branch Managers, District Managers and/or Territory Managers
24 employed by HLEC in California, including Plaintiff, who (according to company
25 records during certain weeks within the Settlement Class Period) supervised or
26 managed less than two (2) full-time employees, or the equivalent part-time
27 employees at any time from August 10, 2013 to the present (the “Under Supervised
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1 Subclass”) (hereafter the two groups are referred to collectively as the “Settlement
2 Class Members”). The “Effective Date” means ten (10) business days after either
3 (a) if no objections are timely filed, the entry date of Final Approval Order of this
4 Settlement Agreement by the Court; (b) if objections are filed but no appeal is filed,
5 the expiration date of the time for filing notice of any appeal from the Order
6 Granting Final Class Action Settlement Approval by the Court; or (c) if an appeal
7 is filed, the latest of (i) the date of final affirmance of an appeal of that Order, (ii)
8 the expiration of the time for a petition for review or writ of certiorari with respect
9 to the Order and, if review or certiorari is granted, the date of final affirmance of
10 the Order following review pursuant to that grant; or (iii) the date of final dismissal
11 of any appeal from the Order or the final dismissal of any proceeding on review or
12 certiorari with respect to the Order that has the effect of confirming the Order.

13 3. This action is provisionally certified pursuant to Rule 23 of the Federal
14 Rules of Civil Procedure as a class action for purposes of settlement only with
15 respect to the proposed Settlement Class.

16 4. The Court hereby preliminarily finds that the Settlement was the
17 product of serious, informed, non-collusive negotiations conducted at arm’s length
18 by the Parties. In making this preliminary finding, the Court considered the nature
19 of the claims set forth in the pleadings, the amounts and kinds of benefits which
20 shall be paid pursuant to the Settlement, the allocation of Settlement proceeds to the
21 Settlement Class, and the fact that the Settlement represents a compromise of the
22 Parties’ respective positions. The Court further preliminarily finds that the terms of
23 the Settlement have no obvious deficiencies and do not improperly grant
24 preferential treatment to any individual Class Member. Accordingly, the Court
25 preliminarily finds that the Settlement was entered into in good faith.

26 5. The essential monetary terms of the Settlement are as follows:
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- 1 a. Defendant HLEC’s payment of a Gross Settlement Amount
2 (“GSA”) of \$550,000;
- 3 b. Plaintiff’s Incentive Award of up to \$15,000;
- 4 c. Class Counsel’s fees of not more than one-third of the GSA, or
5 \$183,333;
- 6 d. Class Counsel’s costs and expenses not to exceed \$25,000;
- 7 e. The Claims Administrator’s costs not to exceed \$10,000;
- 8 f. Civil penalties under the California Private Attorneys General
9 Act (“PAGA”) of \$10,000, of which 25% or \$2,500 will be payable to the
10 Settlement Class and 75% or \$7,500 will be payable to the California Labor and
11 Workforce Development Agency (“LWDA”);
- 12 g. The Net Settlement Amount (“NSA”) is the net amount
13 available for distribution to Settlement Class Members after payments have been
14 made from the GSA for (i) Plaintiff’s Incentive Award; (2) Class Counsel’s
15 attorney’s fees; (3) Class Counsel’s costs and expenses; (4) Claims Administration
16 Costs; (5) the portion of the PAGA payment payable to the LWDA; and (6)
17 employer- and employee-side taxes.

18 6. The Court finds that the dates set forth in the Settlement for mailing
19 and distribution of the Class Notice meet the requirements of due process and
20 provide the best notice practicable under the circumstances, and constitute due and
21 sufficient notice to all persons entitled thereto, and directs the mailing of the Class
22 Notice by first class mail to the Settlement Class as set forth in the Settlement.
23 Accordingly, the Court orders the following implementation schedule for further
24 proceedings:

- 25 a. Within thirty (30) business days following the date of this order
26 (the “Preliminary Approval Date”), Defendant shall provide Phoenix Class Action
27 Administration Solutions, the appointed Claims Administrator, with the first and
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1 last names, last-known addresses, telephone numbers, dates of employment, and
2 full social security numbers of the Settlement Class Members (“Class List”) for
3 purposes of mailing Class Notices to Settlement Class Members. The Claims
4 Administrator will keep the list confidential, use it only for the purposes described
5 herein and take adequate safeguards to protect confidential or private information.

6 b. Within forty (40) business days following the Preliminary
7 Approval Date, the Claims Administrator shall send a copy of the Class Notice and
8 a pre-paid self-addressed return envelope (collectively referred to as the “Notice
9 Packets”) to all Settlement Class Members via first-class mail, postage prepaid,
10 using the most current mailing address information available contained in the Class
11 List. Any Notice Packets returned to the Claims Administrator as non-delivered
12 before the expiration of the 45-calendar day Opt-Out Period for Settlement Class
13 Members to mail Exclusion Forms shall be sent to the forwarding addresses affixed
14 thereto. If no forwarding address is provided for a Notice Packet that is returned as
15 non-delivered, then such Notice Packet will be re-sent by the Claims Administrator
16 after the address is updated using the following skip-trace procedures: (1) run this
17 Class List through the United States Postal Service’s National Change of Address
18 database; and (2) perform address searches using public and proprietary electronic
19 resources which collect their data from various sources such as utility records,
20 property tax records, motor vehicle registration records, and credit bureaus.
21 Undelivered Notice Packets will be re-sent within five (5) business days after the
22 Claims Administrator receives notice that the Notice Packet was undeliverable. The
23 objection deadline shall not be extended *pro-rata* for members of the Settlement
24 Class whose original notices are re-mailed.

25 c. Within forty-five (45) calendar days after the Claims
26 Administrator mails the Notice Packet to Settlement Class Members, Settlement
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1 Class Members who wish to exclude themselves from the Settlement Agreement
2 must postmark a request for exclusion from the Settlement (“Opt-Out”).

3 d. Within forty-five (45) calendar days after the Claims
4 Administrator mails the Notice Packet to Settlement Class Members, Settlement
5 Class Members who wish to object to the Settlement Agreement should mail a
6 written statement of objection to the Claims Administrator.

7 e. The Court will consider any written or oral objections or
8 comments from Settlement Class Members at the time of the Final Approval
9 Hearing, whether or not they comply with the objection procedure described above.

10 7. The Court approves, as to form and content, the Class Notice (in
11 substantially the form attached as Exhibit A to the Settlement).

12 8. The Court approves, for settlement purposes only, David Spivak of
13 The Spivak Law Firm and Walter Haines of the United Employees Law Group as
14 Class Counsel.

15 9. The Court approves, for settlement purposes only, Emy Johnston as
16 the Class Representative.

17 10. The Court approves Phoenix Class Action Administration Solutions as
18 the Claims Administrator.

19 11. The Court preliminarily approves Class Counsel’s request for
20 attorneys’ fees and costs subject to final review by the Court.

21 12. The Court preliminarily approves the estimated Claims Administration
22 Costs payable to the Claims Administrator subject to final review by the Court.

23 13. The Court preliminarily approves Plaintiff’s Incentive Award subject
24 to final review by the Court.

25 14. A Final Approval Hearing shall be held on _____, 2020 at
26 ____m. in Courtroom 6 on the 14th floor of the Robert T. Matsui United States
27 Courthouse, United States District Court for the Eastern District of California, 501
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1 “T” Street, Sacramento, CA 95814, to consider the fairness, adequacy and
2 reasonableness of the proposed Settlement preliminarily approved by this
3 Preliminary Approval Order, and to consider the application of Class Counsel for
4 attorneys’ fees and costs and the Incentive Award to the Class Representative. The
5 notice of motion and all briefs and materials in support of the motion for final
6 approval of class action settlement and motion for attorneys’ fees and litigation
7 costs shall be served and filed with this Court on or before ____ court days before
8 the Final Approval Hearing.

9 15. If for any reason the Court does not execute and file a final approval
10 order and judgment, or if the Effective Date, as defined in the Settlement, does not
11 occur for any reason, the proposed Settlement that is the subject of this order, and
12 all evidence and proceedings had in connection therewith, shall be without
13 prejudice to the status quo ante rights of the Parties to the litigation, as more
14 specifically set forth in the Settlement.

15 16. The Court expressly reserves the right to adjourn or continue the Final
16 Approval Hearing from time to time without further notice to members of the Class.
17 The Plaintiff shall give prompt notice of any continuance to Settlement Class
18 Members who object to the Settlement.

19 **IT IS SO ORDERED.**

20
21 _____
DATE

_____ **HON. JOHN A. MENDEZ,**
UNITED STATES DISTRICT JUDGE