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15 *Attorneys for Plaintiffs, on behalf of the*
16 *Putative Class, the State of California*
17 *and Aggrieved Employees*

18 **SUPERIOR COURT OF CALIFORNIA**
19 **COUNTY OF ALAMEDA**

20 KHAYO SISHI, SANDEEP PUREWAL,
21 VANESSA BARBER, and CHERRA REDD on
22 behalf of the Putative Class, the State of
23 California and Aggrieved Employees;

24 *Plaintiffs,*

25 v.

26 ESKATON PROPERTIES INCORPORATED,
27 CALIFORNIA HEALTHCARE
28 CONSULTANTS, INC., and DOES 1-100,
29 inclusive;

30 *Defendants.*

Case No.: RG21100764

Hon. Eumi Lee
Dept. 512

**DECLARATION OF CAROLYN H.
COTTRELL IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: July 28, 2023

Time: 9:30 a.m.

Dept.: 512

Complaint Filed: June 2, 2021

1 I, Carolyn H. Cottrell, hereby declare as follows:

2 1. I am an attorney at law duly licensed to practice law in the State of California. I am a
3 member in good standing of the State Bar of California, I am admitted to the United States District
4 Courts for the Northern, Eastern, Central, and Southern Districts of California. I am admitted to the
5 Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States Supreme Court.

6 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP (“SWCK”).
7 SWCK specializes in class, collective, and PAGA litigation in state and federal court.

8 3. I am co-counsel of record for Plaintiffs Khayo Sishi, Sandeep Purewal, Cherra Redd,
9 and Vanessa Barber, on behalf of themselves, the Class Members, the State of California, and
10 Aggrieved Employees (“Plaintiff”), in the above-captioned case. I submit this declaration in support
11 of Plaintiffs’ Motion for Final Approval of Class Action Settlement. I am familiar with the file, the
12 documents, and the history related to these cases. The following statements are based on my personal
13 knowledge and review of the files. If called to do so, I could and would testify competently thereto.

14 **QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

15 4. SWCK is regarded as one of the leading private plaintiff’s firms in wage and hour class
16 actions and employment class actions. In November 2012, the Recorder listed the firm as one of the
17 “top 10 go-to plaintiffs’ employment firms in Northern California.” The partners and attorneys have
18 litigated major wage and hour class actions, have won several prestigious awards, and sit on important
19 boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and
20 I have been a member of the firm since 1995.

21 5. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases
22 which have been certified and/or settled as class actions includes: *Wright, et al. v. Frontier*
23 *Management LLC, et al.*, (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California, March
24 13, 2023) (final approval of California, Illinois, Oregon, and Washington class and FLSA collective
25 action settlement); *Campos v. Extra Express (Cerritos) Inc.*, (Case No. BC715057) (Los Angeles
26 Superior Court, Jan. 18, 2023) (final approval of California law wage and hour class action settlement
27 alleging misclassification of short haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*,
28 (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31, 2022) (final
29 approval of California and Oklahoma class and FLSA collective action settlement where Plaintiff
30 obtained class certification on behalf of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.*
31 (Case No. RG20061119) (Alameda County Superior Court, June 23, 2022) (final approval of a class
32 action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages,

1 failure to provide meal and rest breaks, waiting time penalties, and failure to provide itemized wage
2 statements, under California law); *Ramirez, et al. v. Rite Aid Corp., et al.*, (Case No. CV 20-3531-
3 GW-SKx) (Central District of California, May 19, 2022) (final approval of California class action and
4 PAGA representative action settlement); *Madrigal v. Mission Lakes Country Club, Inc.* (Case No.
5 RIC2003428) (Riverside County Superior Court, May 18, 2022) (final approval of California class
6 action and PAGA representative action); *Hazel v. Himagine Solutions, Inc.* (Case No. RG20068159)
7 (Alameda County Superior Court, Nov. 2, 2021) (final approval of a California class action settlement
8 for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide
9 meal and rest breaks, failure to reimburse necessary business expenditures, waiting time penalties, and
10 failure to provide itemized wage statements); *Pine Manor Investors, LLC v. FPI Management, Inc.*
11 (Case No. 34-2018-00237315) (Sacramento County Superior Court, October 20, 2021) (final approval
12 of a California class action settlement in action that alleged improper billing for workers compensation
13 charges by an apartment complex management company); *Etcheverry v. Franciscan Health System,*
14 *et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of Washington, October 19, 2021) (final
15 approval of hybrid Fair Labor Standards Act and Washington class action); *Jean-Pierre, et al. v. J&L*
16 *Cable TV Services, Inc.* (Case No. 1:18-cv-11499-MLW) (District of Massachusetts, August 31, 2021)
17 (final approval of hybrid Fair Labor Standards Act and Massachusetts, New Hampshire, Maine, and
18 Pennsylvania class action); *Amaraut, et al. v. Sprint/United Management Co.* (Case No. 19-cv-411-
19 WQH-AHG) (Southern District of California, August 5, 2021) (final approval of hybrid Fair Labor
20 Standards Act and California Labor Code Rule 23 action); *Diaz, et al. v. TAK Communications CA,*
21 *Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final approval of hybrid
22 Fair Labor Standards Act and California Labor Code class action); *Villafan v. Broadpectrum*
23 *Downstream Services, Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of California, April
24 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class action settlement
25 for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business
26 expenses, waiting time penalties, and failure to provide itemized wage statements); *Jones, et al. v.*
27 *CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern District of California, June
28 1, 2020) (final approval of hybrid Fair Labor Standards Act and California, Washington, Illinois,
29 Minnesota, Alaska, and Ohio class action settlement for failure to pay for all hours worked, failure to
30 provide meal and rest breaks, unreimbursed business expenses, waiting time penalties, and failure to
31 provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case No. JCCP 4957)
32 (Orange County Superior Court, January 31, 2020) (final approval of a class action settlement for

1 failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed business
2 expenses, waiting time penalties, and failure to provide itemized wage statements, under California
3 law); *Soto, et al. v. O.C. Communications, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern District
4 of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and California and
5 Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N. Gordon, Inc.*
6 *d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior Court) (final
7 approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum
8 and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and failure to
9 provide itemized wage statements, under California law); *Van Liew v. North Star Emergency Services,*
10 *Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class action
11 settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure
12 to provide meal and rest breaks, failure to reimburse for necessary business expenditures, waiting time
13 penalties, and failure to provide itemized wage statements, under federal law); *Asalati v. Intel Corp.*
14 (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and collective action
15 settlement for failure to pay for all hours worked, failure to pay overtime, failure to provide meal and
16 rest breaks, failure to reimburse for necessary business expenditures, failure to adhere to California
17 record keeping requirements, waiting time penalties, and failure to provide itemized wage statements,
18 under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC*, (Case No. 34-2012-
19 00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to pay
20 wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest
21 breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements,
22 and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enterprises, Inc.,*
23 *et al.*, (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action
24 settlement for failure to provide meal and rest periods, failure to compensate for all hours worked,
25 failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage
26 statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v.*
27 *Mistras Group, Inc.*, (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final
28 approval of a class and collective action settlement for failure to compensate for all hours worked,
29 including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et*
30 *al.*, (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action
31 settlement for failure to provide meal and rest periods, failure to compensate for all hours worked,
32 failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to provide

1 itemized wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.*, (Case No. 15-cv-01889-TEH)
2 (Northern District of California) (final approval of class and collective action settlement for failure to
3 compensate for all hours worked, including overtime, under federal and California law, failure to
4 provide meal and rest breaks, failure to reimburse for necessary business uniforms, failure to pay full
5 wages upon termination to, and failure to provide accurate itemized wage statements); *Holmes, et al*
6 *v. Xpress Global Systems, Inc.*, (Case No. 34-2015-00180822) (Sacramento Superior Court) (final
7 approval of a class action settlement for failure to provide meal and rest breaks and failure to provide
8 accurate itemized wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.*, (Case No. 3:13-cv-
9 04357-VC) (Northern District of California) (final approval of a class and collective action settlement
10 for failure to compensate for all hours worked, including overtime, failure to provide meal and rest
11 breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon
12 termination to, and failure to provide accurate itemized wage statements); *Molina, et al. v. Railworks*
13 *Track Systems, Inc.*, (Case No. BCV-15-10135) (Kern County Superior Court) (final approval of a
14 class action settlement for failure to provide meal and rest breaks, unpaid wages, unpaid overtime, off-
15 the-clock work, failure to pay full wages upon termination to, and failure to provide accurate itemized
16 wage statements); *Allen, et al. v. County of Monterey, et al.*, (Case No. 5:13-cv-01659) (Northern
17 District of California) (settlement between FLSA Plaintiffs and Defendant to provide relief to affected
18 employees); *Barrera v. Radix Cable Holdings, Inc., et al.*, (Case No. CIV 1100505) (Marin County
19 Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks
20 to, off-the-clock work by, failure to provide overtime compensation to, failure to reimburse business
21 expenditures to, failure to pay full wages upon termination to, and failure to provide accurate itemized
22 wage statements to retention specialists working for cable companies); *Glass Dimensions, Inc., et al.*
23 *v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of
24 class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA);
25 *Friend, et al. v. The Hertz Corporation*, (Case No. 3:07-052222) (Northern District of California)
26 (settlement of claims that rental car company misclassified non-exempt employees, failed to pay
27 wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v.*
28 *Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final
29 approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and
30 other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No.
31 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office)
32 (final approval of class action settlement for the denial of promotions based on targeted disabilities);

1 *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval
2 of class action settlement on behalf of a class of individuals with mobility disabilities denied access to
3 various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First*
4 *American Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action
5 settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21,*
6 *Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class
7 action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed
8 by, a class of retail employees); *Sosa, et al. v. Dreyer’s Grand Ice Cream, Inc., et al.*, (Case No. RG
9 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to
10 provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream
11 manufacturing employees); among many others.

12 6. Nearly my entire legal career has been devoted to advocating for the rights of
13 individuals who have been subjected to illegal pay policies, discrimination, harassment, and retaliation
14 and representing employees in wage and hour and discrimination class actions. I have litigated
15 hundreds of wage and hour, employment discrimination and civil-rights actions, and I manage many
16 of the firm’s current cases in these areas.

17 7. I am a member of the State Bar of California, and have had memberships with Public
18 Justice, the National Employment Lawyers Association, the California Employment Lawyers
19 Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San
20 Francisco Trial Lawyers Association and co-chaired its Women’s Caucus. I was named one of the
21 “Top Women Litigators for 2010” by the Daily Journal. In 2012, I was nominated for Woman Trial
22 Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer
23 every year since 2014. I earned my Bachelor’s degree from the University of California, and I am a
24 graduate of the University of the Pacific, McGeorge School of Law.

25 **FACTUAL AND PROCEDURAL BACKGROUND**

26 **Procedural History**

27 8. On March 15, 2021, Plaintiff Khayo Sishi submitted a letter to the Labor and
28 Workforce Development Agency (“LWDA”), notifying the agency of his intent to file a lawsuit for
29 penalties under the PAGA. He later submitted an amended letter on May 18, 2021 and all named
30 Plaintiffs further supplemented their letters to the LWDA on August 12, 2022. The LWDA did not
31 issue any response.

32 9. As a result, on June 2, 2021, Plaintiff Sishi filed his Complaint for Penalties Pursuant

1 to Sections 2699(a) and (f) of the California Private Attorneys General Act against Defendant Eskaton
2 Properties Incorporated, and then filed a First Amended Complaint to add Defendant California
3 Healthcare Consultants, Inc. as an additional Defendant on July 28, 2021.

4 10. Defendants filed their Answers on August 6, 2021 and September 15, 2021.

5 11. On August 23, 2021, Plaintiff Sandeep Purewal filed a class action lawsuit against
6 Eskaton Properties Inc. for violations under the California Business & Professions Code Sections
7 17200, et seq.

8 12. On September 28, 2021, Plaintiffs Vanessa Barber and Cherra Redd submitted a letter
9 to the LWDA, notifying the agency of their intent to file a lawsuit for penalties under the PAGA. On
10 December 2, 2021, Plaintiffs Vanessa Barber and Cherra Redd filed a lawsuit against Eskaton
11 Properties Inc. for penalties under the PAGA.

12 13. On or about April 4, 2021, Zenaya White submitted a letter to the LWDA notifying the
13 agency of her intent to file a lawsuit for penalties under the PAGA. On June 7, 2021, Zenaya White
14 filed an action against Eskaton; Eskaton Clearlake Oaks Manor; Eskaton Foundation; Eskaton
15 Fountainwood Lodge; Eskaton Frank Jaconetti Senior Manor; Eskaton Lodge Granite Bay; Eskaton
16 Properties, Inc.; Eskaton Roseville Manor; Eskaton Village-Grass Valley; Eskaton Village-
17 Placerville; and Eskaton Village-Roseville, for penalties under the PAGA.

18 14. Following Class Counsel's investigation in this Action, the Parties agreed that the cases
19 should be consolidated and Plaintiffs Barber, Redd, and Purewal should be added to the First Amended
20 Complaint. The Court ultimately granted the Parties' stipulation for leave to file a Second Amended
21 Complaint to incorporate these additional Plaintiffs and their claims, and the Second Amended
22 Complaint was filed on September 13, 2022.

23 **Discovery and Mediation**

24 15. The Parties agreed to attend early mediation in this action.

25 16. The Parties engaged in extensive informal discovery leading up to mediation, wherein
26 Defendants produced documents and information on an informal basis to facilitate mediation. Pursuant
27 to Class Counsel's requests, Defendants produced hundreds of pages of documents prior to mediation
28 including, but not limited to, applicable written policies, Plaintiff Sishi's personnel file and time and
29 pay records, an approximately 10% sampling of employee payroll data, and payroll calendars for the
30 PAGA period. Defendants further produced class-wide data points, including total class members,
31 total pay periods, total workweeks and shifts, and total former employees, among other data points.
32 Class Counsel completed an exhaustive review of Defendants' documents and data and used the

1 information and data from them to prepare for mediation, including in the preparation of its detailed
2 damages analysis.

3 17. To further their investigation, Class Counsel also engaged in multiple in-depth
4 interviews with putative class members who worked at several locations around the state of California.
5 These interviews covered topics including dates and locations of work, hours of work, pre-shift and
6 post-shift off-the-clock work, meal and rest breaks, reimbursement of work-related expenses, and
7 unpaid medical or physical testing. Through this process, Plaintiffs garnered substantial factual
8 background regarding the alleged violations, which Class Counsel utilized to build their case and to
9 further assess Defendants' potential exposure in this action.

10 18. On February 15, 2022, the Parties conducted a full day mediation session, which was
11 remotely held before well-respected and highly skilled employment law mediator, Jeffrey Krivis. The
12 case did not settle but the Parties agreed to continue negotiations and subsequently scheduled a second
13 mediation for March 4, 2022.

14 19. Following the first mediation session, Defendants produced additional documents,
15 including, but not limited to, meeting agendas and sign in sheets, timestamp question and answer detail
16 reports, additional policies and training materials, and other pertinent documents. Again, Class
17 Counsel completed an exhaustive review of the documents, and used this information and data to
18 prepare for mediation, including in the preparation of its detailed damages analysis.

19 20. On March 4, 2022, the Parties conducted a second mediation session, after which the
20 mediator issued a mediator's proposal. The Parties continued to negotiate the scope of the release to
21 ensure a fair recovery for the Class and ultimately accepted the mediator's proposal on March 30,
22 2022, and signed a term sheet memorializing the major terms of the Parties' agreement on April 8,
23 2022.

24 21. The Parties extensively met and conferred over the detailed terms of the settlement over
25 several months through intensive, arm's-length negotiations, and eventually executed the finalized
26 long-form settlement agreement on November 22, 2022.

27 22. The Parties later agreed to an Addendum A to the Settlement to exclude Plaintiff Barber
28 as a class representative, which was fully executed on December 12, 2022.

29 23. Thereafter, the Parties agreed to Addendum B to the Settlement, which adds Zenaya
30 White as a class representative and LFJ and CL as additional co-counsel.

31 24. The Court granted preliminary approval of the Settlement on January 20, 2023.

32 25. To my knowledge, Settlement Services, Inc. ("SSI") mailed and emailed the Class

1 Notice to Class Members on March 3, 2023, and zero Class Members have objected to the settlement
2 or disputed their workweek information, and only 5 have opted out of the Settlement.

3 THE SETTLEMENT

4 **Basic Terms and Value of the Settlement**

5 26. The Settlement provides for a non-reversionary Gross Settlement Amount of
6 \$5,500,000.00. Defendants agree to pay the employer's share of payroll taxes separately.

7 27. Defendants will fund the Gross Settlement Amount within 20 business days after the
8 Effective Date. The payment will be used to pay 100% of the Settlement Awards to Settlement Class
9 Members, the Service Awards, the PAGA payment, Class Counsel fees and costs, and the Settlement
10 Administration costs, upon approval by the Court.

11 28. With the Motion for Final Approval, to be filed in advance of the Final Approval
12 hearing, Class Counsel will seek fees of no more than one-third (1/3) of the Gross Settlement
13 Amount, or \$ 1,833,333.33, and actual costs, which are currently estimated at \$30,905.95. The
14 Settlement also sets aside \$60,000.00 for the estimated costs of settlement administration; \$10,000
15 to Class Representative Khayo Sishi and \$5,000.00 each to Class Representatives Sandeep Purewal,
16 Cherra Redd, and Zenaya White for their service to the Class, and \$55,000.00 for PAGA penalties.¹

17 **Class and Aggrieved Employee Definitions**

18 29. An individual is eligible to share in the proposed Settlement if he or she belongs to
19 any of the following:

20 ■ **“Class Members”** means all current and former hourly, non-exempt workers employed by
21 Defendants throughout California any time between June 2, 2017 and June 11, 2022 or
22 Preliminary Approval or any earlier date determined by Defendants.

23 ■ **“Aggrieved Employees”** means all current and former hourly, non-exempt workers
24 employed by Defendants or Eskaton, Inc., Eskaton Village-Grass Valley, Inc., Eskaton
25 Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton Lodge Granite Bay, Inc.,
26 Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O'Connor Woods
27 Housing Corporation, Inc. throughout California any time between March 29, 2020 and June
28 11, 2022 or Preliminary Approval or any earlier date determined by Defendants.

29
30
31 ¹ The Parties agree to allocate \$55,000.00 of the Gross Settlement Amount to the settlement of the PAGA claims, which
32 the Parties believe in good faith is a fair and reasonable apportionment. The Settlement Administrator shall pay 75%, or
\$41,250.00, of this amount to the LWDA and 25%, or \$13,750.00, the “Net PAGA Amount,” shall be allocated to the
Aggrieved Employees, pursuant to Labor Code § 2699(i).

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Settlement Awards for Eligible Class Members

30. The estimated Net Settlement Amount available to Class Members totals \$3,495,760.72 and Net PAGA Amount of \$13,750.00 (for a total of \$ 3,509,510.72). The Net Settlement Amount is to be allocated among and paid to Settlement Class Members (i.e., those Class Members who do not timely opt out of the Settlement) proportionally based on the number of workweeks the Class Member worked.

31. Specifically, for each workweek, or fraction thereof, during which the Settlement Class Member worked for Defendants at any time between June 2, 2017 and June 11, 2022, he or she shall be eligible to receive a *pro rata* portion of the Net Settlement Amount based on the number of workweeks the Class Member worked.

32. Each workweek will be equal to one settlement share. The total number of settlement shares for all Settlement Class Members will be added together and the resulting sum will be divided into the Net Settlement Amount to reach a per share dollar figure. That figure will then be multiplied by each Settlement Class Members' number of settlement shares to determine the Settlement Class Members' *pro rata* portion of the Net Settlement Amount.

33. For any Aggrieved Employee who worked for Defendants throughout California any time between March 29, 2020 and June 11, 2022, he or she shall be eligible to receive an *pro rata* portion of the Net PAGA Amount based on the number of pay periods worked between March 29, 2020 and June 11, 2022. The total number of settlement shares for all Aggrieved Employees will be added together and the resulting amount will be divided into the Net PAGA Amount to reach a per share dollar figure. That figure will then be multiplied by each Aggrieved Employee's number of settlement shares to determine the Aggrieved Employees' *pro rata* portion of the Net PAGA Amount.

34. Settlement Class Members will each receive a settlement award check without the need to submit a claim form.

35. The Settlement Awards will be allocated as follows: any portion of each Settlement Award that is provided from the Net PAGA Amount shall be allocated as penalties. For the remainder of each Settlement Award, one-fourth (1/4) shall be allocated to wages and three-fourths (3/4) shall be allocated to penalties and interest. Settlement Awards will be paid out to Settlement Class Members subject to reduction for all employee's share of withholdings and taxes associated with the wage-portion of the Settlement Awards, for which Settlement Class Members shall be issued an IRS Form W-2. Settlement Class Members will also be issued an IRS Form 1099 for the

1 portions of the Settlement Awards that are allocated to penalties and interest.

2 36. In calculating payments due under this Settlement, the Settlement Administrator will
3 use Defendants' Class List: an electronic database containing the names, last known addresses, last
4 known telephone numbers (if any), last known personal email address (if available), social security
5 numbers or tax ID numbers of each Class Member, along with the total number of workweeks that
6 each Class Member worked in the state of California between June 2, 2017 and June 11, 2022. The
7 Class List will also include an indication of whether the Class Member is an Aggrieved Employee
8 and the Defendant and/or Released Parties for whom each Class Member worked and who will be
9 paying that Class Member's share of Employment Taxes.

10 37. To the extent that any Settlement Class Member disputes the number of workweeks
11 that the Settlement Class Member worked, as shown in his or her Settlement Notice, such Settlement
12 Class Members may produce evidence to the Settlement Administrator establishing the dates they
13 contend to have worked for Defendants. Defendants shall review their records and provide further
14 information to the Settlement Administrator, as necessary. The Settlement Administrator shall
15 provide a recommendation to counsel for the Parties. Counsel for the Parties shall then meet and
16 confer in an effort to resolve the dispute. If the dispute cannot be resolved by the Parties, it shall be
17 presented to the Court for a resolution. The Settlement Administrator will notify the disputing
18 Settlement Class Member of the decision.

19 38. The Settlement Administrator shall mail all Settlement Awards to the Settlement Class
20 Members within 10 days after the Settlement Administrator receives the Gross Settlement Amount,
21 or as soon as reasonably practicable. All Settlement Award checks will remain valid for 180 days
22 from the date of their issuance. The Settlement Administrator will send a reminder letter via U.S.
23 mail and email to those Settlement Class Members with uncashed checks at 90 days remaining, and
24 will place a call at 60 days remaining. The disposition of any uncashed check funds remaining after
25 the check-cashing deadline will depend on the total amount.

26 39. Any funds from uncashed checks will be redistributed either to the Settlement Class
27 Members who cashed their checks if the total residual amount is equal to or greater than \$75,000, or
28 revert to an agreed-upon *cy pres* beneficiary if the total residual amount is less than \$75,000.

29 40. The Parties propose Legal Aid at Work, a non-profit that provides legal services
30 assisting low-income, working families and promotes a better understanding of the conditions,
31 policies, and institutions that affect the well-being of workers and their families and communities,
32 as the *cy pres* recipient, subject to approval by the Court.

1 41. Class Counsel is not aware of any financial or business relationship between Legal
2 Aid at Work and the Plaintiffs or any party, any officer, director or manager of any party, or any
3 attorney or law firm for any party. However, Joshua Konecky, one of the partners at SWCK, is a
4 volunteer member on the board of Legal Aid at Work, but is not paid for his volunteer services.

5 **Releases**

6 42. The releases contemplated by the proposed Settlement are tethered to the factual
7 allegations in the operative complaint. Upon Final Approval of the Settlement Agreement and
8 payment of amounts set forth herein, and except as to such rights or claims as may be created by the
9 Settlement Agreement, Plaintiffs and all Class Members who choose not to opt-out of the Settlement
10 shall release and discharge all Releasees, finally, forever and with prejudice, from the claims listed
11 below for the period between June 2, 2017 and June 11, 2022.

12 43. Class Members who choose not to opt-out of the Settlement will release Defendants
13 and Releasees² from any and all claims that are or could have been alleged in the operative
14 complaints against Defendants and Releasees, and the Second Amended Complaint that the Parties
15 stipulate to in the Action, including but not limited to claims under California Labor Code §§ 201-
16 204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 516, 558, 558.1,
17 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2800, 2802,
18 and 2810.5, reporting time wages, and violations of California Unfair Competition Laws (Cal. Bus.
19 & Prof. Code §§ 17200, et seq.), and any amendment(s) thereto based on the factual allegations
20 contained therein.

21 44. Plaintiffs and the Aggrieved Employees fully release the claims and rights to recover
22 civil penalties against Defendants and Releasees on behalf of the LWDA and Aggrieved Employees,
23 to recover civil penalties, costs, expenses, attorneys' fees, or interest against the Releasees on behalf
24 of Aggrieved Employees and LWDA for any Labor Code or Wage Order violation alleged or could
25 have been alleged in any Complaint or PAGA letters, including but not limited to the Second
26 Amended Complaint and amended PAGA letter, in the Action, including violations of the following:
27 California Labor Code §§ 201-204, 210, 216, 218, 218.5, 222.5, 226, 226.3, 226.7, 246, 248.5, 256,
28 510, 512, 516, 558, 558.1, 1021.5, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198,

29
30 ² "Releasees" or "Released Parties" means Defendants and their present and former parent companies, subsidiaries,
31 related or affiliated companies, and their shareholders, officers, directors, employees, agents, attorneys, insurers,
32 successors and assigns, and any individual or entity that could be liable for any of the Released Claims, including Eskaton,
Inc., Eskaton Village-Grass Valley, Inc., Eskaton Village-Placerville, Inc., Eskaton Village – Roseville, Inc., Eskaton
Lodge Granite Bay, Inc., Eskaton Fountainwood Lodge, Inc., The Reutlinger Community, Inc., and O'Connor Woods
Housing Corporation, Inc., and Defendants' Counsel.

1 1198.5, 1199, 2800, 2802, 2810.5, and reporting time wages. The release period for PAGA claims
2 runs from March 29, 2020 to June 11, 2022.

3 45. Khayo Sishi, Sandeep Purewal, Cherra Redd, and Zenaya White (“Class
4 Representatives”) also agree to a general release.

5 **Settlement Administration**

6 46. The Parties selected SSI as the Settlement Administrator. SSI will satisfy due process
7 requirements in notifying Class Members of the settlement and distributing Settlement Awards
8 according to the Settlement. If the Settlement is finally approved, SSI will administer payments to
9 the Settlement Class Members, including calculation of payroll taxes and preparation of tax reporting
10 documents.

11 47. Within 20 business days after the Court’s Preliminary Approval of the Settlement,
12 Defendants provided to the Settlement Administrator the Class List (and to Class Counsel a redacted
13 Class List) containing: an electronic database containing the names, last known addresses, last
14 known telephone numbers (if any), last known personal email address (if available), social security
15 numbers or tax ID numbers of each Class Member, along with the total number of workweeks that
16 each Class Member worked in the state of California between June 2, 2017 and June 11, 2022. The
17 Class List also included an indication of whether the Class Member is an Aggrieved Employee and
18 the Defendant and/or Released Parties for whom each Class Member worked and who will be paying
19 that Class Member’s share of Employment Taxes.

20 48. The Settlement Administrator then distributed the Settlement Notice via mail and
21 email, calculated individual settlement payments, and calculated all applicable payroll taxes,
22 withholdings and deductions.

23 49. The Settlement Administrator established a settlement website that allowed Class
24 Members to view the Settlement Notice (in generic form), the Settlement Agreement, and all papers
25 filed by Class Counsel to obtain preliminary approval of the Settlement. The Settlement
26 Administrator also established a toll-free call center for telephone inquiries from Class Members.

27 50. Prior to the initial mailing, SSI took reasonable efforts to identify current addresses
28 via public and proprietary systems, as needed. For any Settlement Notice returned as undeliverable,
29 but with a forwarding address attached, SSI re-mailed them to the updated address. For any
30 Settlement Notice returned as undeliverable without a forwarding address, SSI made reasonable
31 efforts to locate forwarding addresses, including a skip trace, and if it obtained a more recent address,
32 resent the Settlement Notice.

1 51. The Notice Deadline was sixty (60) days after the Settlement Administrator first
2 mailed the Settlement Notice to the Class Members.

3 52. SSI provided a report showing: (i) the names of Class Members; (ii) the Settlement
4 Awards owed to each Class Member; (iii) the final number of Class Members who have submitted
5 objections or valid letters requesting exclusion from the Settlement; and (iv) the number of
6 undeliverable Settlement Notices. Upon completion of administration of the Settlement, the
7 Settlement Administrator shall provide written certification of such completion to counsel for all
8 Parties and the Court. This written certification shall include the total number of Settlement Class
9 Members (including the total number of Class Members who requested exclusion), the average
10 recovery per Settlement Class Member, median recovery per Settlement Class Member, the largest
11 and smallest amounts paid to Settlement Class Members, and the number and value of checks not
12 cashed.

13 53. Defendants agree to make the payment to the Settlement Administrator within 20
14 business days of the Effective Date.

15 54. The “Effective Date” of the Settlement means (i) if there is an objection(s) to the
16 settlement that is not subsequently withdrawn, then the date upon the expiration of time for appeal
17 of the Court’s Final Approval Order; or (ii) if there is a timely objection(s) and appeal by an
18 objector(s), then after such appeal(s) is dismissed or the Court’s Final Approval Order is affirmed
19 on appeal; or (iii) if there are no timely objections to the settlement, or if any objections which were
20 filed are withdrawn before the date of final approval, then the first business day after the Court’s
21 order granting Final Approval of the Settlement.

22 55. Within 10 business days after the check cashing deadline, the Settlement
23 Administrator shall provide counsel a report regarding the total amount of any funds that were paid
24 to the Settlement Class Members and remain from checks that are returned as undeliverable or are
25 not negotiated. Class Counsel will then submit a post-judgment report to the Court regarding any
26 funds that remain from such checks.

27 56. If at the conclusion of the 180-day check cashing period, any funds remaining from
28 checks that are returned as undeliverable or are not negotiated, these funds will be redistributed
29 either to the Settlement Class Members who cashed their checks if the total residual amount is equal
30 to or greater than \$75,000, or revert to an agreed-upon *cy pres* beneficiary if the total residual amount
31 is less than \$75,000.

32 **THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

1 57. Pursuant to the Court’s January 20, 2023 order granting preliminary approval, the
2 Settlement Notice was mailed (and emailed where provided) to the 5,988 Class Members according
3 to the terms of the Settlement.

4 58. The Notice provided a description of the case and the proposed Settlement, informed
5 Class Members of their individual workweeks and estimated individual settlement payment, explained
6 how Settlement Class Members can receive payment under the Settlement, exercise their right to opt-
7 out, object, or dispute their workweeks, and identified Class Counsel and the anticipated attorneys’
8 fees and costs. SSI also set up a toll-free number and website for Class Member inquiries.

9 59. The Net Settlement Amount of \$3,509,510.72 results in fair and just relief to Class
10 Members. A review of the Settlement reveals the fairness of its terms.

11 60. Class Counsel investigated the applicable law and facts in this case and extensively
12 analyzed the potential damages that might be recovered following the exchange of documents and
13 information with Defendants.

14 61. Plaintiffs’ liability and damages evaluation was premised on a careful and extensive
15 analysis of the effects of Defendants’ compensation policies and practices on Class Members’ pay.

16 62. The Parties attended two mediations with a well-respected mediator and a settlement
17 was reached after numerous arm’s-length settlement discussions between Class Counsel, Defendants’
18 counsel, and the mediator, and an extensive review of the facts, law, documents, and data.

19 63. In reaching the proposed Settlement, Class Counsel also relied on their substantial
20 litigation experience in similar wage-and-hour class actions. Based on Class Counsel’s knowledge and
21 expertise in this area of law, Class Counsel believes this Settlement will provide a substantial benefit
22 to the Class Members.

23 64. The Settlement also yields a prompt, certain, and substantial recovery to Settlement
24 Class Members.

25 65. Absent this Settlement, Class Members would be forced to wait years for the case to
26 make its way through litigation (including discovery, class certification, dispositive motions, trial,
27 and appeal). It is estimated that Class Counsel’s fees and costs would far exceed \$2,000,000.00 to
28 pursue these claims through final resolution. Litigating the class claims in this action would require
29 substantial additional discovery including written discovery, the depositions of current and former
30 employees and experts, as well a deposition of Defendants’ person most qualified on several topics.
31 *Id.* It would also require consideration, preparation, and presentation of voluminous documentary
32 evidence and the preparation and analysis of expert reports. Defendants likely have resources they

1 could use to litigate the case for years to come, including through multiple levels of appeals.

2 66. Resolution of these claims now through the Settlement will benefit the parties and the
3 court system.

4 67. The reasonableness of the Settlement is further underscored by the fact that Defendants
5 have legal and factual grounds available to defend this action and that further litigation poses the risk
6 of no recovery. Defendants posit that this case is not suitable for class treatment, that they fully
7 complied with their obligations under the Labor Code, and that Plaintiffs and Class Members are not
8 entitled to damages, penalties, or other relief sought.

9 68. Plaintiffs would also face other significant risks if the litigation were to proceed to trial.
10 Plaintiffs would need to establish class-wide liability and prove up various issues regarding damages
11 and penalties. Such efforts would likely take many more months, if not years, and would necessitate
12 expert witness testimony and significant additional litigation.

13 69. Even if Plaintiffs successfully overcame these procedural obstacles, full recovery of
14 Plaintiffs' claims would also require complete success and certification of all of Plaintiffs' claims, a
15 questionable feat in light of developments in wage and hour and class action law as well as the legal
16 and factual grounds that Defendants have asserted to defend this action.

17 70. While Plaintiffs are confident that they would establish that common policies and
18 practices give rise to the off-the-clock work for Class Members, Plaintiffs acknowledged that the off-
19 the-clock work was performed by hourly employees holding various job titles at dozens of different
20 locations around California, and whether all such work was under the control of Defendants would be
21 heavily contested. With differing facilities' physical layouts, supervisors, and the nature of the work
22 varying by location, Plaintiffs recognized that obtaining class certification would present a significant
23 obstacle, with the risk that the Class Members could only pursue individual actions in the event that
24 certification was denied. Certification of off-the-clock work claims is further complicated by the lack
25 of documentary evidence and reliance on employee testimony, and Plaintiffs would likely face
26 motions for decertification as the case progressed.

27 71. Plaintiffs' claims regarding business expense reimbursements and for unpaid medical
28 or physical examinations would be equally difficult to certify for class treatment, given that the nature
29 and amounts of such expenses may vary based on the individualized circumstances of each worker,
30 and given that evidence of such expenses would be complicated by the lack of documentary evidence
31 and reliance on employee testimony.

32 72. Additionally, Plaintiffs' derivative claims rise and fall with Plaintiffs' other claims.

1 While Plaintiffs believe they would prevail on these issues, they recognize the risk that a fact finder
2 may find for Defendants on one or more issues and may find damages to be significantly less than
3 what Plaintiffs claim.

4 73. Plaintiffs would also likely need to move for and defend against motions for summary
5 judgment or adjudication, and would have been further required to take their claims to trial.

6 74. Although Plaintiffs believe they could have been successful in proving these claims,
7 and that Defendants' evidence would not have been as persuasive, a trial on off-the-clock claims and
8 meal and rest periods would have carried a high degree of risk.

9 75. Defendants, represented by experienced employment lawyers, raised many of the
10 above arguments, and more, in mediation and would have done so in continued litigation. Despite
11 Plaintiffs' confidence in their ability to prove their claims on a Class-wide basis, any of the defenses,
12 if decided in Defendants' favor, could have reduced or even eliminated any potential damages award.

13 76. The Net Settlement Amount will be available to the 5,983 Settlement Class Members,
14 exclusive of attorneys' fees and costs, settlement administration costs, payment to the LWDA, and the
15 service award.

16 77. Individual settlement payments are allocated based on the number of workweeks for
17 each Settlement Class Member in proportion to the total workweeks for all Settlement Class Members.

18 78. Based on my review of SSI's calculations of the individual settlement payments, the
19 Net Settlement Amount provides an estimated average recovery of \$587.78 per Settlement Class
20 Member.

21 79. The result is not only within the reasonable standard, but Class Counsel believes it is
22 quite reasonable when considering the difficulty and risks presented by continuing this litigation.

23 80. Based on Class Counsel's investigation, interviews with multiple Class Members, and
24 analysis of Defendants' data, Class Counsel determined that Class Members worked off the clock
25 an average of 4.5 minutes per day, were subject to a 45% violation rate for meal breaks and 57%
26 violation rate for rest breaks per shift, and were required to pay approximately \$129.26 for necessary
27 business expenses and/or medical testing on average without reimbursement. Based on Defendants'
28 data, Class Members worked an average of 4 hours per shift, worked an average of 86.84 shifts over
29 5 hours per Class Member, worked an average of 5.57 shifts over 8 hours per Class Member, and
30 were paid an average of 3.03 meal and rest period premiums per Class Member. Applying these
31 inputs and further data points to Defendant's compensation policies, Plaintiffs prepared an exposure
32 analysis that provided the estimated potential recovery for each cause of action.

1 81. For purposes of estimating Defendants’ exposure, Class Counsel ran an analysis with
2 the following assumptions: based on their analysis and investigation, that Plaintiffs and the putative
3 Class fully prevail on all causes of action and can prove 4.5 minutes of unpaid overtime for all shifts
4 over 8 hours a day, and can prove missed meal and rest periods per week for each Class Member for
5 45% and 57%, respectively, of all shifts worked. To estimate the premium rate penalties, and waiting
6 time penalties, Class Counsel used the actual hourly rates of pay for each class member as provided
7 by Defendants, and presumed an average of eight hours per day, one 30-minute meal break per
8 qualifying shift, and two rest periods per qualifying shift. Using the pay rates of each employee
9 provided by Defendants, Class Counsel calculated the average rates of pay for each employee for
10 the duration of the class period. To estimate penalties under the PAGA, Class Counsel estimated 1
11 PAGA violation was made per pay period, per Aggrieved Employee, within the PAGA period.

12 82. Based on Class Counsel’s investigation, as well as an analysis of the data, documents,
13 and information provided by Defendants, Class Counsel determined that Defendants’ total potential
14 exposure for the estimated 5,759 California Class Members and Aggrieved Employees is
15 approximately \$43.3 million.

16 83. Class Counsel estimates the total approximate damages per claim are as follows: \$4.45
17 million for the meal break violations, \$5.64 million for the rest break violations, \$72,770 for the
18 overtime damages, \$1.75 million for the off-the-clock violations at the regular rate, \$744,408 for
19 expense reimbursement violations under Sections 2802 and 222.5, \$9.28 million for the wage
20 statement violations, \$9.84 million for waiting time penalties, and \$11.52 million for civil penalties
21 under the PAGA. Using the high-end assumptions described above, Class Counsel determined
22 Defendants’ total potential exposure as to the class and PAGA claims amounted to approximately
23 \$43.3 million.³

24 84. Class Counsel calculated the above as follows: (1) meal and rest break damages per
25 employee based on employees’ average regular rate of pay, deducted by employees’ paid average
26 meal period premiums; (2) overtime damages, per employee based on employees’ average regular
27 rate of pay, then multiplied that by the average post-shift work per employee; (3) off-the-clock work
28 damages at the regular rate of pay per employee based on employees’ average rate of pay during the
29

30 ³ Class Counsel further determined that sick pay would have been applicable to approximately 12%
31 of all pay periods, for a total of \$510,000 in damages. However, given the majority trend among
32 district and superior courts addressing sick pay and finding that no private right of action for sick pay
exists under California law, Class Counsel accordingly discounted this amount from their exposure
analysis.

1 class period instead of the overtime rate; (4) damages for unreimbursed business expenses for each
2 class member; (5) wage statement penalties based on a cap of \$4,000 per employee; and (6) waiting
3 time penalties per each employee who separated from employee during the class period based on the
4 pay rate for the year separated multiplied by thirty. Finally, as to PAGA penalties, Class Counsel
5 calculated the pay periods at issue during the relevant PAGA period and calculated \$100 for each
6 initial violation, and \$100 for each subsequent violation.

7 85. The Settlement represents 43% of the Defendants' total substantive potential exposure
8 estimated at \$12.6 million, which represents Defendants' exposure for core claims for unpaid wages,
9 meal and rest breaks, and expense reimbursements that would have been owed to the Class Members.

10 86. The Gross Settlement Amount further represents approximately 13% of the estimated
11 Defendants' total potential exposure of \$43.3 million, including derivative and PAGA claims.

12 87. To obtain such amounts, Plaintiffs and the putative Class would have been required to
13 fully prevail on all causes of action and prove that Plaintiffs and the Class indeed were subject to the
14 assumed violation rates noted above.

15 **SERVICE AWARDS**

16 88. The unopposed payments to Plaintiff Sishi in the amount of \$10,000.00, and \$5,000
17 each to the other Class Representatives are reasonable in light of the efforts they made and the risks
18 they took in filing and prosecuting the action(s) to obtain this \$5,500,000.00 Settlement.

19 89. Throughout this litigation, the Class Representatives worked with counsel and assisted
20 in the development of the case.

21 90. Plaintiff Sishi provided extensive information and documents to Class Counsel,
22 including but not limited to wage statements, correspondences to and from Defendants, and policy
23 documents, in anticipation of discovery and in preparation for mediation. He also assisted Class
24 Counsel in their preparation for mediation and answered Class Counsel's questions in developing
25 Plaintiffs' position for mediation.

26 91. The Class Representatives further provided Class Counsel with pivotal information
27 and/or took part in the Settlement decision, have remained apprised of the case at all times; and have
28 all agreed to a broader releases.

29 92. Due to Plaintiffs' efforts and their willingness to step forward, the Class Members will
30 receive significant recoveries if the Settlement is approved. If they did not serve as Plaintiffs and Class
31 Representatives, the matter may never have been brought. The Class Members would not get any
32 recovery and Defendants' alleged conduct would have gone unchecked.

1 93. In agreeing to serve as Class Representatives, Plaintiffs Sishi, Purewal, Redd, and
2 Zenaya White accepted the responsibilities of representing the interests of all Class Members. The
3 Class Representatives have committed their time to the case(s) and assumed significant risk to obtain
4 the result. Their service in a wage and hour class action lawsuit may be discerned by potential
5 employers and members of the community, creating a very real risk of future repercussions,
6 particularly with respect to their future job opportunities.

7 94. Defendants do not oppose the requested payments to the Plaintiffs as a reasonable
8 service award.

9 **ATTORNEYS’ FEES AND COSTS**

10 95. For their efforts and the substantial risk they undertook in obtaining this Settlement and
11 the considerable monetary compensation to the Class Members, Class Counsel seeks an award of one-
12 third of the Gross Settlement Amount, or \$1,833,333.33, as well as reasonable litigation expenses of
13 \$30,905.95.

14 96. In this case, given the excellent results achieved, the effort expended litigating the
15 action, including the difficulties attendant to litigating this case, an upward adjustment of one-third of
16 the Gross Settlement Amount, or \$5,500,000.00, is warranted. There was no guarantee of
17 compensation or reimbursement. Rather, Class Counsel have undertaken all the risks of this litigation
18 on a completely contingency fee basis. In the *Wal-Mart v. Dukes* era—a decision that does not
19 eliminate employment class actions, but which nonetheless underscores the difficulties and
20 uncertainties in prevailing—the risks inherent in litigating large, employment class actions are great.
21 Even a favorable ruling on class certification faces a significant risk of reversal by an appellate court.
22 The inherent risk of proving liability and damages on a Class-wide basis and Defendants’
23 representation by skillful counsel confront Class Counsel with the prospect of recovering nothing or
24 close to nothing for their commitment to and investment in the case.

25 97. Nevertheless, Plaintiffs, Class Representatives, and Class Counsel committed
26 themselves to developing and pressing Plaintiffs legal claims to enforce the employees’ rights and
27 maximize the Class recovery. During the litigation, counsel had to turn away other, less risky cases to
28 remain sufficiently resourced for this one. The challenges that Class Counsel had to confront and the
29 risks they had to fully absorb on behalf of the Class here are precisely the reasons for multipliers in
30 contingency fee cases.⁴ As Class Members will receive a significant payment if the Settlement is

31
32 ⁴ (Posner, *Economic Analysis of the Law*, 534, 567 (4th ed. 1992) (“A contingent fee must be higher than a fee for the same legal services paid as they are performed... because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans”].)

1 approved, Class Counsel seeks a reasonable fee award for their efforts and the risk they have assumed.

2 98. Attorneys who litigate on a wholly or partially contingent basis expect to receive
3 significantly higher effective hourly rates in cases where compensation is contingent on success,
4 particularly in hard-fought cases where, like in the case at bar, the result is uncertain. This does not
5 result in any windfall or undue bonus. In the legal marketplace, a lawyer who assumes a significant
6 financial risk on behalf of a client rightfully expects that his or her compensation will be significantly
7 greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the
8 greater the risk, the greater the “enhancement.” Adjusting court-awarded fees upward in contingent
9 fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of hours of labor
10 simply makes those fee awards consistent with the legal marketplace, and in so doing, helps to ensure
11 that meritorious cases will be brought to enforce important public interest policies and that clients who
12 have meritorious claims will be better able to obtain qualified counsel.

13 99. This commitment and the risks involved are precisely the reasons for multipliers in
14 contingency fee cases. As Settlement Class Members will receive a significant payment if the
15 Settlement is approved, Class Counsel seek a reasonable fee award for their efforts and the risk they
16 have assumed.

17 100. For these reasons, Class Counsel respectfully submits that a one-third recovery for fees
18 is modest and appropriate.

19 **SWCK’s Lodestar**

20 101. Class Counsel’s aggregate lodestar is estimated at approximately \$874,490.00.

21 102. As of July 3, 2023, SWCK has devoted approximately 757.7 hours to this case for a
22 current total lodestar of \$494,290.00. A true and correct copy of detailed breakdown of SWCK’s
23 lodestar as of that date, is attached here as **Exhibit A**.

24 103. Class Counsel’s aggregate lodestar will increase as a result of preparation for and
25 attendance at the Final Approval Hearing and the settlement administration process.

26 104. I am the lead partner at SWCK with respect to this action, and I actively litigated this
27 case. In particular, I worked with my team to strategize regarding the case generally, strategized with
28 the team regarding mediation and developed and implanted a mediation strategy, appeared at the
29 mediations, correspond with the mediator regarding settlement, oversaw and corresponded with my
30 team regarding the drafting of the settlement agreement and papers for approval of the settlement, and
31 reviewed the settlement agreement and settlement approval papers.

32 105. Ori Edelstein is a partner on this matter. Mr. Edelstein worked on this case in several

1 capacities. For example, he assisted with preparing and revising the pleadings, LWDA letters, written
2 discovery requested, and other filings. He corresponded with Defendants' counsel regarding the
3 mediations and settlement, prepared for the mediations, and strategized with the team regarding the
4 mediations, including as to the damages analysis and mediation brief. He attended the mediations,
5 strategized with the team regarding settlement, and assisted with revising the settlement agreement,
6 settlement addenda, and settlement approval papers. He also appeared in court on behalf of the
7 Plaintiffs.

8 106. Michelle Lim is an associate on this matter. Ms. Lim worked on this case in several
9 capacities. For example, she strategized with the team regarding the case and the mediations,
10 corresponded with Defendants, reviewed and analyzed documents produced by Defendants in
11 anticipation of mediations, prepared the damages analyses for the mediations, and attended mediation.
12 She also assisted with preparation of the settlement agreement and addenda thereto, the drafting of the
13 settlement approval papers and supplements thereto.

14 107. Kristabel Sandoval is an associate on this matter. Ms. Sandoval worked on this case in
15 several capacities. For example, she assisted in preparing the complaints and other filings, and
16 corresponded with Plaintiffs regarding the case and settlement. She also participated in meet and
17 confer calls and correspondences with Defendants' counsel regarding mediation and settlement. Ms.
18 Sandoval assisted with preparation for mediation, including reviewing and analyzing documents and
19 data produced by Defendants, drafting the mediation brief, and attending the mediations. Ms. Sandoval
20 assisted with preparation of the settlement agreement and addenda, and drafting the settlement
21 approval papers and supplement thereto.

22 108. Other attorneys reflected in Exhibit A, including Aysegul Williams, Frank Perez, James
23 Dion, Julissa Hunt, Lauren Looney, Onyebuchi Okeke, Philippe Gaudard, Ryan Bonner, Ryan Bonner,
24 Samantha Smith, Sarai Gardner, and Sunny Sarkis, were generally involved with tasks such as
25 outreach efforts for the Class members, assisting with briefings, indexing documents received from
26 Defendant, initial investigations of the claims, drafting the pleadings and LWDA notices, and research
27 and strategizing on claims.

28 109. The other individuals reflected in Exhibit A under the law clerks, paralegals, and
29 clerical staff sections performed duties such as outreach efforts for the Class members, finalizing and
30 filing documents, calendaring deadlines, and preparing documents for service and mailing. They also
31 assisted with reserving hearing dates, scheduling court reporters, checking the docket for updates we
32 may not have received by mail and for tentative rulings, and communicating with the court and the

1 attorneys.

2 110. All of the work described above was reasonable and necessary to the prosecution and
3 settlement of this case. Class Counsel conducted extensive factual and legal investigation and
4 marshaled the case through mediation and settlement approval. Through this comprehensive
5 evaluation of the facts and law, Class Counsel was able to settle this case for a substantial sum. Class
6 Counsel achieved this result in a very timely fashion, providing members of the Settlement Class with
7 substantial and certain relief much sooner than if litigation continued in this matter.

8 111. The Settlement reached with Defendants involves complex provisions that are specific
9 to wage and hour litigation. The Settlement and the result achieved are a reflection of Class Counsel's
10 skill and experience. The Settlement provides Settlement Class Members with substantial benefits
11 without having to wait for years of drawn-out litigation.

12 112. SWCK's hourly rates are the usual and customary 2023 rates for each individual in all
13 of our cases.

14 113. SWCK's rates have recently increased to reflect the market. In this action, Class
15 counsel has billed \$1,105 for partner hours, between \$680 and \$935 for other attorneys, and between
16 \$250 and \$500 for law clerks, paralegals, and other clerical staff.

17 114. In *Amaraut v. Sprint/United Mgmt. Co.* (S.D. Cal. Aug. 5, 2021) 2021 WL 3419232,
18 2021 U.S. Dist. LEXIS 147176, at *20, Judge William Q. Hayes of the United States District Court
19 for the Southern District of California recently held that "the hourly rates of Schneider Wallace Cottrell
20 Konecky LLP ... are reasonable, and that the estimated hours expended are reasonable." Judge Hayes
21 found that the "[t]wenty-five attorneys and paralegals from SWCK spent 1,707.90 hours on [the] case,
22 with billing rates ranging from \$300 to \$450 for the paralegals and \$680 to \$1,005 for the attorneys"
23 had "significant experience in class action and wage and hour litigation and has demonstrated
24 significant skill during this contentious litigation."

25 **Class Counsel's Costs**

26 115. Class Counsel also requests reimbursement for their litigation costs. This litigation
27 required Class Counsel, to advance costs. Because the risk of advancing costs in this type of litigation
28 is significant, doing so is often prohibitive to many attorneys.

29 116. SWCK's litigation costs as of June 29, 2023 total \$22,731.77. A true and correct copy
30 of SWCK's detailed breakdown of costs as of June 29, 2023 is attached here as **Exhibit B**. This exhibit
31 reflects the dates, nature, and amounts of each expense incurred.


32 117. Costs incurred include, for example, costs for filing and service, mediation costs,

1 document retrieval and printing costs, mailing costs, jury fees, and costs for submission of the PAGA
2 letter to the LWDA. All of these expenses were reasonable and necessary for the successful
3 prosecution of this litigation.

4 118. Class Counsel's efforts resulted in an excellent settlement, and the requested fee award
5 is exceeded by Class Counsel's lodestar. The fee and costs award should be approved as fair and
6 reasonable.

7
8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct and is based on my own personal knowledge.

10
11 Executed this 30th day of June, 2023, in Auburn, California.

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13 
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15 _____
16 Carolyn H. Cottrell

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EXHIBIT A

Sishi, Khayo, et al. v. Eskaton Properties, Incorporated, 102186**Billing Summary by Matter**

Inception - 07/03/2023, All Timekeepers

TIMEKEEPER	TITLE	BAR DATE	HOURLY RATE (\$)	HOURS	AMOUNT (\$)
Clerical Staff					
Caroline Dean (CJD)	Accounting Specialist		250	0.9	225.00
Elana Ummel (EMU)			250	0.4	100.00
Joseph McKay (JXM)	Docketing Clerk		275	6.0	1,650.00
Sarah Weiner (SIW)	Case Assistant		300	29.5	8,850.00
Stephanie Ramirez (SXR)	Outreach Specialist		300	13.5	4,050.00
Subtotal				50.3	\$ 14,875.00
Of Counsel / Associates					
Aysegul "Shay" Williams (AXW)	Staff Attorney	01/21/2016	680	35.0	23,800.00
Caroline Cohen (CNC)	Sr. Associate	12/02/2011	900	0.1	90.00
Frank Perez (FAP)	Associate Attorney	12/03/2015	800	1.3	1,040.00
James Dion (JMD)	Staff Attorney	12/05/2017	680	3.2	2,176.00
Julissa Hunte (JLH)		01/24/2020	680	1.3	884.00
Kristabel Sandoval (KXS)	Associate	12/07/2018	725	228.2	165,445.00
Lauren Looney (LNL)	Attorney	10/25/2019	680	2.0	1,360.00
Michelle Lim (MSL)	Associate	06/01/2017	750	105.9	79,425.00
Onyebuchi Okeke (OJO)	Staff Attorney	10/05/2021	680	23.8	16,184.00
Philippe Gaudard (PMG)	Associate	06/01/2020	725	8.3	6,017.50
Ryan Bonner (RAB)	E-Discovery Manager	07/01/2015	750	1.8	1,350.00
Samantha Smith (SZS)	Sr. Associate	12/01/2004	935	0.5	467.50
Sarai Gardner (SXG)	Staff Attorney	12/10/2021	680	24.9	16,932.00
Sunny Sarkis (SQS)	Associate	12/02/2008	935	0.1	93.50

Subtotal			436.4	\$	315,264.50
Paralegals / Law Clerks					
Ashley Hermann (AZH)	Paralegal		450	2.9	1,305.00
Benita Harris (BHH)	Docketing Specialist		275	0.4	110.00
Brianda Rodriguez (BCR)	Outreach Specialist		350	28.8	10,080.00
Collin Hoover (CEH)	Paralegal		450	45.9	20,655.00
Elisa Guevara (EIG)	Paralegal		450	4.8	2,160.00
Eugene Huffman (ENH)	Paralegal		450	20.2	9,090.00
Lonnie Christopher (LRC)	Docketing Specialist		275	0.7	192.50
Lourdes Castro (LEC)	Jr. Paralegal		450	0.6	270.00
Maria Alvarez (MTA)	Legal Assistant		275	0.6	165.00
Michael Garcia (MEG)	Docketing Specialist		275	28.3	7,782.50
Ruby Rawlinson (RVR)			300	28.2	8,460.00
Sarah Price (SQP)	Case Manager		500	0.4	200.00
Silvia Carter (SGC)	Paralegal		450	1.4	630.00
Thomas Barnett (TRB)	Outreach Supervisor		350	14.1	4,935.00
Tracey McClain (TLM)	Intake Manager		425	7.1	3,017.50
Tyler Smith (TBS)	Office Manager/Paralegal		500	1.0	500.00
Subtotal			185.4	\$	69,552.50
Partners					
Carolyn Cottrell (CMH)	Partner	12/13/1993	1105	21.4	23,647.00
Ori Edelstein (OXE)	Partner	12/01/2009	1105	64.2	70,941.00
Subtotal			85.6	\$	94,588.00
Total:			757.7	\$	494,280.00

EXHIBIT B

CASE COSTS

Sishi, Khayo v. Eskaton Properties

Matter No. 102186

Date: 06/29/2023

DATE	VENDOR	DESCRIPTION	AMOUNT
03/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 02/01/21 - 02/28/21	\$ 4.04
03/17/2021	LWDA	LWDA PAGA letter filing	\$ 75.00
04/06/2021	Neilson & MacRitchie	Investigation – Sishi, Khayo	\$ 546.18
06/04/2021	Superior Court of California A	Complaint, Complex Designation, Fax Filing	\$ 1,450.00
07/09/2021	One Legal LLC (Info Track)	Civil Case Cover Sheet, Complaint, Summons, Notice of Hearing - No Split	\$ 104.75
07/16/2021	Superior Court of California A	Notice of Assignment of Judge for All Purposes Issued	\$ 4.00
07/20/2021	Superior Court of California A	Jury Fee - Case No. RG21100764, Dept. 20	\$ 150.00
07/30/2021	FedEx	07/26/21 FedEx to Clerk Of The Court from Eric Morgan	\$ 13.52
07/31/2021	Superior Court of California A	Fax Filing	\$ 2.00
08/01/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 07/01/21 - 07/31/21	\$ 6.96
08/03/2021	Superior Court of California A	Fax Filing	\$ 25.00
08/16/2021	One Legal LLC (Info Track)	Summons, First Amended Complaint - No Split	\$ 106.00
08/17/2021	Superior Court of California A	Fax Filing	\$ 3.00
12/17/2021	First Mediation Corporation	2/15/22 Mediation - Jeffrey Krivis - Plaintiffs 1/2 of \$18,000 - No Split	\$ 9,000.00
12/20/2021	One Legal LLC (Info Track)	CMS, POS - No Split	\$ 24.95
12/22/2021	Superior Court of California A	Document Purchase	\$ 6.00
12/31/2021	RELX Inc DBA LexisNexis	Document Retrieval - Period: 12/01/21 - 12/31/21	\$ 4.69
01/31/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 01/01/22 - 01/31/22	\$ 4.87
02/10/2022	One Legal LLC (Info Track)	Motion for Leave, Memorandum of Points & Authorities, Declaration, Order, Proof of Servi	\$ 83.95
02/10/2022	One Legal LLC (Info Track)	Order, Proof of Service (not Summons and Complaint)	\$ 23.95
02/10/2022	One Legal LLC (Info Track)	Declaration	\$ 18.95
02/15/2022	One Legal LLC (Info Track)	Motion for Leave (to File a Second Amended Complaint), Memorandum of Points & Autho	\$ 63.50
02/15/2022	One Legal LLC (Info Track)	Declaration (Declaration of Ori Edelstein in Support of Plaintiff's Motion for Leave to File §	\$ 59.00
02/16/2022	First Mediation Corporation	03/04/22 Mediation (2nd Session)	\$ 9,000.00
02/28/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 02/01/22 - 02/22/22	\$ 232.01
03/31/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 03/01/22 - 03/31/22	\$ 6.62
04/02/2022	Lim, Michelle (CA-LA)	2/15/22 Court Fees / Filing Fees - Case Related: research prior settlements: Sacramento	\$ 17.40
04/18/2022	One Legal LLC (Info Track)	Notice of Settlement	\$ 24.45
04/19/2022	One Legal LLC (Info Track)	Motion for Order, Order, Proof of Service (not Summons and Complaint)	\$ 17.50
04/21/2022	Superior Court of California A	Document Download	\$ 2.00
04/30/2022	SWCK	CA - Reclass Postage to Case Costs (2021-2022)	\$ 0.53
06/30/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 06/01/22 - 06/30/22	\$ 115.42
08/08/2022	Superior Court of California A	Reservation for our Motion for Preliminary Approval	\$ 1.00
08/13/2022	Superior Court of California A	Rescheduling	\$ 1.00
08/31/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 08/01/22 - 08/31/22	\$ 30.47
09/10/2022	Superior Court of California A	Document Download	\$ 4.00
09/14/2022	One Legal LLC (Info Track)	Courtesy & Photocopy Fees - Amended Complaint	\$ 53.75
09/22/2022	One Legal LLC (Info Track)	eFiling Fee - Amended Complaint	\$ 25.45
09/22/2022	Superior Court of California A	Reservation Courtroom	\$ 1.00
09/28/2022	One Legal LLC (Info Track)	eFiling Fee - CMS, Proof of Service (not Summons and Complaint)	\$ 24.45

DATE	VENDOR	DESCRIPTION	AMOUNT
09/28/2022	Superior Court of California A	Document Download	\$ 1.00
09/30/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 09/01/22 - 09/30/22	\$ 8.69
10/08/2022	Superior Court of California A	Document Download	\$ 2.00
10/14/2022	FedEx	10/05/22 FedEx to Khayo Sishi from Collin Hoover	\$ 22.00
10/14/2022	FedEx	10/05/22 FedEx to Cherra Redd from Collin Hoover	\$ 22.00
10/14/2022	FedEx	10/05/22 FedEx to Sandeep Purewal from Collin Hoover	\$ 22.55
10/14/2022	FedEx	10/07/22 FedEx to Collin Hoover from Khayo Sishi	\$ 16.02
10/14/2022	FedEx	10/07/22 FedEx to Collin Hoover from Cherra Redd	\$ 16.02
10/14/2022	FedEx	10/08/22 FedEx to Collin Hoover from Sandeep Purewal	\$ 17.33
10/22/2022	FedEx	10/12/22 FedEx to Sandeep Purewal from Collin Hoover	\$ 22.55
10/22/2022	FedEx	10/15/22 FedEx to Collin Hoover from Sandeep Purewal	\$ 17.47
11/09/2022	Superior Court of California A	Reservation Reschedule Fee	\$ 1.00
11/14/2022	FedEx	11/03/22 FedEx to Khayo Sishi from Schneider Wallace Cottrell Konecky	\$ 20.21
11/14/2022	FedEx	11/03/22 FedEx to Sandeep Purewal from Brianda Rodriguez	\$ 27.30
11/14/2022	FedEx	11/03/22 FedEx to Cherra Redd from Brianda Rodriguez	\$ 20.21
11/14/2022	FedEx	11/03/22 FedEx to Vanessa Barber from Schneider Wallace Cottrell Konecky	\$ 20.21
11/14/2022	FedEx	11/07/22 FedEx to c/o Collin E. Hoover from Khayo Sishi	\$ 15.22
11/14/2022	FedEx	11/05/22 FedEx to c/o Collin E. Hoover from Cherra Redd	\$ 14.90
11/21/2022	Superior Court of California A	Hearing Reservation - Motion for Preliminary Approval of Settlement	\$ 1.00
11/29/2022	One Legal LLC (Info Track)	eFiling & eServe Fee - Case Management Statement	\$ 25.45
11/30/2022	Superior Court of California A	Reservation Reschedule Fee	\$ 1.00
11/30/2022	SWCK	Copies and Printing from Shared Printing (2021-2022)	\$ 46.50
12/23/2022	One Legal LLC (Info Track)	eFiling & eServe Fee - Notice of Motion, Memorandum of Points & Authorities, Declaratio	\$ 17.50
12/23/2022	One Legal LLC (Info Track)	Court Filing & eFiling Fees - Motion for Preliminary Approval of Settlement, Memorandurr	\$ 79.45
12/23/2022	One Legal LLC (Info Track)	Courtesy & Photocopy Fees - Notice of Motion, Memorandum of Points & Authorities, De	\$ 66.75
01/13/2023	One Legal LLC (Info Track)	eFiling & eServe Fee - Declaration	\$ 24.45
01/13/2023	One Legal LLC (Info Track)	Courtesy & Photocopy Fee - Declaration (Declaration of Ori Edelstein in Support of Plaint	\$ 43.50
01/20/2023	Steno Agency, Inc	01/20/23 Hearing - Plaintiff's Motion for Preliminary Approval of Settlement	\$ 750.00
01/23/2023	Superior Court of California A	Document Download	\$ 6.00
02/09/2023	Superior Court of California A	Document Download	\$ 6.00
02/24/2023	One Legal LLC (Info Track)	Case Management Statement	\$ 25.90
03/31/2023	RELX Inc DBA LexisNexis	Document Retrieval - Period: 03/01/23 - 03/31/23	\$ 14.23
			\$ 22,731.77