

1 **LAW OFFICE OF SCOTT E. WHEELER**  
Scott. E. Wheeler (SBN 187998)  
2 250 West First Street, Suite 216  
Claremont, CA 91711  
3 Telephone: (909) 621-4988  
Facsimile: (909) 621-4622  
4 E-mail: sew@scottwheelerlawoffice.com

5 **THE WAND LAW FIRM, P.C.**  
Aubry Wand (SBN 281207)  
6 400 Corporate Pointe, Suite 300  
Culver City, CA 90230  
7 Telephone: (310) 590-4503  
Facsimile: (310) 590-4596  
8 E-mail: awand@wandlawfirm.com

9 *Attorneys for Plaintiffs and the Putative Class*

10 **SEYFARTH SHAW LLP**  
Michael A. Wahlander (SBN 260781)  
11 mwahlander@seyfarth.com  
Timothy M. Hoppe (SBN 310999)  
12 thoppe@seyfarth.com  
13 560 Mission Street, 31st Floor  
San Francisco, California 94105  
14 Telephone: (415) 397-2823  
15 Facsimile: (415) 397-8549

16 *Attorneys for Defendant*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

19  
20 SCOTT OSKO, DAVID BECERRA,  
DAVID, DAVID BEAUDOIN, and  
21 MICHAEL LANG, individually, and on  
behalf of all others similarly situated,

22 Plaintiffs,

23 v.

24 THE ELITE GROUP PROPERTY  
INSPECTION SERVICE, INC., a California  
25 corporation; and DOES 1 through 50,  
26 inclusive,

27 Defendants.

CASE NO.: 20STCV28718

**AMENDED CLASS ACTION  
SETTLEMENT AGREEMENT AND  
RELEASE**

1 This Amended Class Action Settlement and Release (“Settlement Agreement” or  
2 “Agreement”) is entered into by and between Plaintiffs Scott Osko, David Becerra, David Beaudoin,  
3 and Michael Lang (“Plaintiffs”) on behalf of themselves and the Class, on the one hand, and  
4 Defendant The Elite Group Property Inspection Service, Inc. (“Defendant”), on the other hand.

5 In consideration of the mutual covenants, promises, and agreements set forth herein, the  
6 Parties agree, subject to the approval by the Court, that the Action and the Released Claims shall be  
7 settled and compromised as between Plaintiffs and the Class on the one hand, and Defendant on the  
8 other hand, subject to the terms and conditions set forth herein.

9 **DEFINITIONS**

10 1. “Action” means *Osko, et al. v. The Elite Property Inspection Service, Inc.*, Los  
11 Angeles County Superior Court Case No. 20STCV28718.

12 2. “Class” means all Property Inspectors who were classified as independent  
13 contractors by Defendant, and who performed work for Defendant in California, during the Class  
14 Period.

15 3. “Class Counsel” means the Law Office of Scott E. Wheeler and the Wand Law Firm,  
16 P.C.

17 4. “Class Counsel Award” means (a) attorneys’ fees for Class Counsel’s litigation and  
18 resolution of the Action, and (b) Class Counsel’s expenses and costs incurred in connection with the  
19 Action.

20 5. “Class Information” means the compilation of the following information for each  
21 Class Member: last known full name; social security number; last known address; last known  
22 telephone number; number of compensable workweeks/pay periods for each Class Member during  
23 the Class Period and PAGA Period; whether the Class Member received a prior settlement payment  
24 from the Elite Property Inspection Service, Inc., and other such mutually agreed upon information  
25 by the Parties as may be necessary to independently review the Compensable Workweeks attributed  
26 to each Class Member and PAGA Aggrieved Employee.

27 6. “Class Member(s)” means each person who is a member of the Class defined in  
28 Paragraph 2 above and who is eligible to participate in this Settlement.

1           7.       “Class Notice” means the notice, substantially in the form attached hereto as **Exhibit**  
2 **1**, which the Settlement Administrator will mail to each Class Member, and which explains, *inter*  
3 *alia*, the terms of this Settlement, each Class Member’s estimated Individual Settlement Payment,  
4 the settlement process, and the right of Class Members to object to the Settlement, opt-out of the  
5 Settlement, or dispute the number of Compensable Workweeks attributed to them. The Class Notice  
6 need only be provided in English because all Class Members are fluent in English.

7           8.       “Class Period” means the time period from July 30, 2016 through the Preliminary  
8 Approval Date.

9           9.       “Class Representative Service Award(s)” means the amount that the Court authorizes  
10 to be paid to Plaintiffs, in addition to Plaintiffs’ Individual Settlement Payments and Individual  
11 PAGA Payments, in recognition of, *inter alia*, their efforts and risks in assisting with the prosecution  
12 of the Action and in return for executing a general release with Defendant.

13           10.       “Compensable Workweek(s)” means the number of weeks worked by each Class  
14 Member individually and used as a value to calculate Individual Settlement Payments. The number  
15 of Compensable Workweeks for each Class Member will be calculated by the Settlement  
16 Administrator, based on the Class Information provided by Defendant. The number of Compensable  
17 Workweeks for each Class Member will be determined by counting any week within the Class  
18 Period during which a Class Member performed work (measured by whether the Class Member  
19 performed an inspection in that week). If a Class Member did not receive a prior settlement payment  
20 from The Elite Group Property Inspection Service, Inc., then the Class Member’s Compensable  
21 Workweeks will be multiplied by 1.90 times.

22           11.       “Total Compensable Workweeks” means the sum of the Compensable Workweeks  
23 for all Class Members determined by the process described in Paragraph 10 above. The Total  
24 Compensable Workweeks will include the increased number of Workweeks for Class Members who  
25 did not receive a prior settlement payment from The Elite Group Property Inspection Services, Inc.  
26 Thus, for example, if a Class Member who did not receive a prior settlement payment worked 10  
27 Compensable Workweeks, the total number of workweeks that that employee worked for the  
28 purpose of calculating the Total Compensable Workweeks will be 19 (10 \* 1.9 = 19).

1 12. "Court" means the Superior Court for the County of Los Angeles, State of California.

2 13. "Cy Pres Recipient" means the charitable organization that will receive any  
3 settlement funds that are not negotiated by Settlement Class Members. The Parties have selected  
4 Legal Aid at Work,<sup>1</sup> a 501(c)(3) organization that is dedicated to protecting the rights of low-income  
5 people throughout California, as the Cy Pres Recipient. Among other things, Legal Aid at Work  
6 operates a Wage Protection Program whereby it represents low-wage workers who are the victims  
7 of wage violations.

8 14. "Defendant" means The Elite Group Property Inspection Service, Inc.

9 15. "Defendant's Counsel" means Michael A. Wahlander and Timothy M. Hoppe of  
10 Seyfarth Shaw LLP.

11 16. "Effective Date" means the date on which the Court's Final Approval Order and  
12 Judgment becomes final. The Court's Final Approval Order and Judgment "becomes final" upon  
13 the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but it is  
14 withdrawn, then, the date that the Final Approval Order and Judgment is entered by the Court; (b)  
15 if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced  
16 thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and  
17 Judgment is entered by the Court; or (c) if there is an Objection to the Settlement, that is not  
18 withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been  
19 filed within sixty-five (65) calendar days following the date that the Final Approval Order and  
20 Judgment is entered by the Court, then, when any such appeal, writ, or other appellate proceeding  
21 opposing the validity of the Settlement has been resolved finally and conclusively with no right to  
22 pursue further remedies or relief.

23 17. "Employer's Share of Payroll Taxes" means the dollar amount of Defendant's  
24 employer payroll tax obligation on the employee wage portion of the Individual Settlement  
25 Payments, including but not limited to, customary withholdings for federal, state and local taxes,  
26 and any similar tax or charge. Defendant shall be responsible for paying the Employer's Share of

27

28 <sup>1</sup> <https://legalaidatwork.org/>

1 Payroll Taxes separately from, and in addition to, the Gross Settlement Amount, in the event that  
2 any portion of the Gross Settlement Amount is designated as wages.

3 18. "Final Approval Hearing" means the hearing that the Court will hold after the Court  
4 has granted preliminary approval of the Settlement and notice has been provided to the Class the  
5 response of the Class to the Settlement has been determined, regarding, *inter alia*, whether final  
6 approval of the Settlement is appropriate and the amounts properly payable for: (a) Individual  
7 Settlement Payments; (b) the Class Counsel Award; (c) the Class Representative Service Awards;  
8 (d) payment to the LWDA; and (e) the Settlement Administration Costs.

9 19. "Final Approval Order and Judgment" means an order and judgment that the Court  
10 will enter which finally approves this Settlement and enters a judgment.

11 20. "Gross Settlement Amount" means the amount that Defendant is obligated to pay  
12 under this Settlement Agreement, which is Five Hundred Thirty-Three Thousand Two Hundred  
13 Fifty Dollars and Zero Cents (\$533,250.00). This is a non-reversionary Settlement in which  
14 Defendant is required to pay the entire Gross Settlement Amount, less credit of Ninety-Seven  
15 Thousand Eight Hundred Twenty-Five Dollars and Zero Cents (\$97,825.00), which Defendant  
16 already paid to 54 Class Members, after receiving (and in response to) Plaintiffs' notice letter  
17 submitted pursuant to California Labor Code § 2699.3, and before the Parties participated in  
18 mediation ("Pick-up Stix Payment"). In other words, subject to Court approval, Defendant shall be  
19 obligated to pay an additional Four Hundred Thirty-Five Thousand Four Hundred and Twenty-Five  
20 Dollars and Zero Cents (\$435,425.00) to fully fund the Gross Settlement Amount. No portion of the  
21 Gross Settlement Amount will revert to Defendant under any circumstances. Other than the  
22 Employer's Share of Payroll Taxes (to the extent applicable), the Gross Settlement Amount  
23 constitutes the total maximum amount that Defendant shall pay to settle this Action.

24 21. "Individual Settlement Payment" means the amount payable from the Net Settlement  
25 Amount to each Settlement Class Member, less employee portions of state and federal withholding  
26 taxes, including FICA, FUTA and SDI contributions and any other applicable payroll deductions  
27 required by law, only to the extent applicable, as a result of the payment of the amount allocated to  
28 such Class Members.

1           22.    “Individual PAGA Payment” means the amount payable to the PAGA Aggrieved  
2 Employees from the \$15,000 allocated to them (i.e., 25% of \$60,000 allocated to penalties under  
3 the PAGA included in this settlement in Paragraph 62(j) of this Agreement).

4           23.    “LWDA” means the California Labor and Workforce Development Agency.

5           24.    “Net Settlement Amount” means the Gross Settlement Amount, less the Class  
6 Counsel Award, Class Representative Service Awards, the entire Payment to the LWDA and PAGA  
7 Aggrieved Employees outlined in Paragraph 62(j) (i.e., \$60,000), the Pick-up Stick Payment  
8 (\$97,825.00), and Settlement Administration Costs. If the Court approves less than the amounts  
9 requested for the Class Counsel Award, Class Representative Service Awards, payment to the  
10 LWDA and PAGA Aggrieved Employees for PAGA penalties, or Settlement Administration Costs,  
11 such amounts will return to the Net Settlement Amount.

12           25.    “Objection” means a written communication submitted by a Class Member to the  
13 Settlement Administrator that contains a clear statement by the Class Member that he or she is  
14 objecting to any of the terms of the Settlement. Class Members may also object to the Settlement  
15 orally at the Final Approval Hearing without the need to submit a written Objection.

16           26.    “PAGA Aggrieved Employees” means all Property Inspectors who were classified  
17 as independent contractors by Defendant, and who performed work for Defendant in California,  
18 during the PAGA Period.

19           27.    “PAGA Period” means any time between July 16, 2019 through the Preliminary  
20 Approval Date.

21           28.    “PAGA Workweek(s)” means the number of weeks worked by each PAGA  
22 Aggrieved Employee individually during the PAGA Period and used as a value to calculate  
23 Individual PAGA Payments. The number of PAGA Workweeks for each PAGA Aggrieved  
24 Employee will be calculated by the Settlement Administrator, based on the Class Information  
25 provided by Defendant. The number of PAGA Workweeks for each PAGA Aggrieved Employee  
26 will be determined by counting any week within the PAGA Period during which a PAGA Aggrieved  
27 Employee performed work (measured by whether the Aggrieved Employee performed an inspection  
28 that week).

1           29.   “Parties” means Plaintiffs and Defendant collectively, and “Party” means either  
2 Plaintiffs or Defendant individually.

3           30.   “Payment Ratio” means the respective Compensable Workweeks for each Settlement  
4 Class Member divided by the Total Compensable Workweeks for all Settlement Class Members.

5           31.   “PAGA Payment Ratio” means the respective PAGA Workweeks for each PAGA  
6 Aggrieved Employee divided by the total PAGA Workweeks for all PAGA Aggrieved Employees.

7           32.   “Plaintiffs” means Scott Osko, David Becerra, David Beaudoin, and Michael Lang.

8           33.   “Preliminary Approval Date” means the date upon which the Court enters the  
9 Preliminary Approval Order.

10          34.   “Preliminary Approval Order” means the order, substantially in the form attached  
11 hereto as **Exhibit 2**, which grants preliminary approval of the Settlement.

12          35.   “Request for Exclusion” means a letter or other written communication submitted by  
13 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member  
14 that he or she is electing to be excluded from the Settlement.

15          36.   “Released Parties” means Defendant and its predecessors, successors, subsidiaries,  
16 parent companies, other corporate affiliates, owners and assigns, and all of their officers, directors,  
17 employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns,  
18 and any other persons acting by, through, under or in concert with any of them.

19          37.   “Released Claims by Plaintiffs” means: In exchange for the consideration provided  
20 under this Settlement, Plaintiffs, for themselves and for their heirs, representatives, attorneys,  
21 executors, administrators, successors, and assigns — release, acquit, remise, and forever discharge  
22 the Released Parties, from any and all actions, causes of action, obligations, costs, expenses,  
23 damages, losses, claims, liabilities, suits, debts, demands, and benefits (including attorneys’ fees  
24 and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected,  
25 matured or unmatured, of any kind or nature whatsoever, based on any act, omission, event,  
26 occurrence, or nonoccurrence from the beginning of time to the date of execution hereof, including  
27 but not limited to any claims or causes of action arising out of or in any way relating to Plaintiffs’  
28 relationship with and/or services performed for Defendant or which have been or could have been

1 made in the Action. This release of claims includes, but is not limited to, claims for breach of any  
2 implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to  
3 any pay, including, but not limited to, overtime wages, meal and rest break premiums, bonuses, and  
4 commissions; claims of wrongful denial of insurance and employee benefits; claims for wrongful  
5 termination, retaliatory discharge or public policy violations of whatever kind or nature, defamation,  
6 invasion of privacy, fraud, misrepresentation, emotional distress or other common law or tort  
7 matters; claims of harassment, retaliation or discrimination based on any basis, including but not  
8 limited to age, race, color, religion, sex, sexual orientation, national origin, ancestry, physical or  
9 mental disability, medical condition, marital status; claims under the California Labor Code,  
10 California Government Code, California Business and Professions Code, and California Health and  
11 Safety Code; claims based upon the California Constitution; claims based on any federal, state or  
12 other governmental statute, regulation or ordinance, including, without limitation, the California  
13 Confidentiality of Medical Information Act, the California Fair Employment & Housing Act, the  
14 California Unfair Business Practice Act, the California Private Attorneys General Act, I.W.C. Wage  
15 Orders, the California Labor Code, the California Family Rights Act, Title VII of the Civil Rights  
16 Act, the Fair Labor Standards Act, the Americans with Disabilities Act, the Labor Management  
17 Relations Act, the Family Medical Leave Act, the Age Discrimination in Employment Act (29  
18 U.S.C. § 621, et seq.), and the Older Workers Benefit Protection Act, all as amended. As to  
19 Plaintiffs' Released Claims only, Plaintiffs expressly waive all rights and benefits under the terms  
20 of section 1542 of the California Civil Code. Section 1542 reads as follows:

21 **A general release does not extend to claims that the creditor or releasing party does**  
22 **not know or suspect to exist in his or her favor at the time of executing the release**  
23 **and that, if known by him or her, would have materially affected his or her settlement**  
24 **with the debtor or releasing party.**

25 Notwithstanding the provisions of section 1542, and for the purpose of implementing a full  
26 and complete release and discharge of all of their Released Claims, Plaintiffs expressly acknowledge  
27 that this Settlement is intended to include in its effect, without limitation, all Released Claims which  
28 Plaintiffs do not know or suspect to exist in their favor at the time of execution hereof, and that the  
Settlement contemplates the extinguishment of all such Released Claims.



1 Notwithstanding this general release of claims, nothing in this Agreement is intended to  
2 operate as, nor shall be construed as, a release or waiver of any rights and/or claims that cannot be  
3 released or waived as a matter of law.

4 This general release applies to Plaintiffs only. It does not apply to the Released Claims by  
5 Settlement Class Members or PAGA Aggrieved Employees, which is set forth in Paragraph 38  
6 below.

7 38. “Released Class Claims by Settlement Class Members” means: in exchange for the  
8 consideration provided under this Settlement, Settlement Class Members shall fully and finally  
9 release and discharge Released Parties, from any and all claims, debts, liabilities, demands,  
10 obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action,  
11 pleaded or that could have been pleaded based on facts and claims asserted in the operative  
12 Complaint, including: any and all claims for: (a) willful misclassification of employees as  
13 independent contractors; (b) failure to prove meal periods; (c) failure to provide rest breaks; (d)  
14 failure to overtime wages; (e) failure to pay minimum wages; (f) failure to pay timely wages; (g)  
15 failure to pay all wages owed and due upon termination; (h) failure to maintain required records; (i)  
16 failure to furnish accurate itemized wage statement; (j) failure to provide reimbursement for  
17 employment-related expenses; (k) failure to produce or make available requested records; (l)  
18 violation of California Business & Professions Code section 17200, *et seq.*; and (m) violation of  
19 California Private Attorneys’ General Act, California Labor Code § 2699, *et seq.*, predicated on any  
20 of the violations of the California Labor Code and applicable IWC Wage Order alleged in the  
21 operative Complaint. This release shall apply to all claims arising at any point during the Class  
22 Period.

23 39. “Released PAGA Claims by PAGA Aggrieved Employees” means all claims for  
24 civil penalties under the PAGA that Plaintiffs, on behalf of themselves, the State of California, and  
25 all PAGA Aggrieved Employees, disclosed in Plaintiffs’ LWDA letter, attached hereto as **Exhibit**  
26 **3**, and that Plaintiffs and PAGA Aggrieved Employees are fully and irrevocably releasing the  
27 Released Parties from, in exchange for the consideration provided by this Settlement. PAGA  
28 Aggrieved Employees will only release claims alleged in, or that could have been alleged, based on

1 the facts asserted in Plaintiffs' LWDA letter. PAGA Aggrieved Employees will release the PAGA  
2 Claims even if they, as a Class Member, request exclusion from the class. Released PAGA Claims  
3 include any claims for attorneys' fees, costs, or other damages that may be recoverable under the  
4 PAGA claims that are alleged or could have been alleged in the Operative complaint. This release  
5 shall apply to PAGA claims arising at any point during the PAGA Period.

6 40. "Response Deadline" means sixty (60) calendar days after the postmark date of the  
7 Class Notice that the Settlement Administrator shall mail to Class Members, and the last date on  
8 which Class Members may: (a) submit a Request for Exclusion; (b) submit a written Objection to  
9 the Settlement; or (c) dispute the number of Compensable Workweeks attributed to them.

10 41. "Settlement" means the disposition of the Action pursuant to this Agreement.

11 42. "Settlement Administration Costs" means the amount to be paid to the Settlement  
12 Administrator from the Gross Settlement Amount for notice and administration of this Settlement.

13 43. "Settlement Administrator" means ILYM Group, Inc. The Settlement Administrator  
14 shall be responsible for, *inter alia*: (a) printing and mailing the Class Notice to the Class; (b)  
15 calculating the Individual Settlement Payments based on the Class Information; (c) to the extent  
16 applicable, calculating the Employer's Share of Payroll Taxes which Defendant shall pay in addition  
17 to the Gross Settlement Amount; (d) receiving and reporting the Requests for Exclusion and  
18 Objections submitted by Class Members to the Parties; (e) providing declaration(s) as necessary in  
19 support of preliminary and/or final approval of this Settlement; (f) processing and mailing payments  
20 to Plaintiffs, Class Counsel, the LWDA, and Settlement Class Members; (g) creating and  
21 maintaining a static settlement website where relevant documents and information pertaining to the  
22 Settlement will be posted, including *inter alia*, the judgment and amended judgment if applicable;  
23 and (h) any other tasks as the Parties mutually agree or the Court orders the Settlement Administrator  
24 to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance  
25 of all Settlement Administrator responsibilities. The Parties agree that they have no financial interest  
26 or other relationship with ILYM Group, Inc. that could create a conflict of interest. Should a conflict  
27 of interest or other issue lead to the disqualification of the selected Settlement Administrator, the  
28 Parties will meet and confer as to a suitable replacement.



1           49.    Defendant’s Reasons for Settlement. Defendant has concluded that any further  
2 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of  
3 Defendant’s time, energy, and resources have been and, unless this Settlement is completed, will  
4 continue to be devoted to the defense of the claims asserted by Plaintiffs. Defendant has also taken  
5 into account the risks of further litigation in reaching their decision to enter into this Settlement.  
6 Defendant specifically and generally denies all of the claims asserted in the Action and all other  
7 Released Claims; denies all allegations and claims as to liability, damages, penalties, interest, fees  
8 and all other forms of relief; denies any and all wrongdoing of any kind whatsoever associated with  
9 any of the facts or claims alleged in the Action; and makes no concessions or admissions of  
10 wrongdoing or liability of any kind whatsoever. Defendant maintains that for any purpose other than  
11 settlement, the Action is not suitable or appropriate for class action or representative action  
12 treatment. Defendant has agreed, nonetheless, to settle in the manner and upon the terms set forth  
13 in this Settlement Agreement to put to rest the claims in the Action. As to the Released Claims,  
14 Defendant denied and continues to deny each of those claims.

#### STIPULATION AND AGREEMENT

16           50.    NOW THEREFORE, in consideration of the mutual covenants, promises, and  
17 agreements set forth herein, the Parties agree, subject to the Court’s approval, as follows:

18           51.    It is agreed by and among Plaintiffs and Defendant that this Settlement shall bind the  
19 Plaintiffs, Settlement Class Members, PAGA Aggrieved Employees, and Defendant, subject to the  
20 terms and conditions hereof.

21           52.    Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,  
22 the “acknowledging party” and each Party to this Agreement other than the acknowledging party,  
23 an “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written  
24 communication or disclosure between or among the Parties or their attorneys and other advisers, is  
25 or was intended to be, nor shall any such communication or disclosure constitute or be construed or  
26 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230  
27 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,  
28 or its own, independent legal and tax counsel for advice (including tax advice) in connection with

1 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any  
2 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any  
3 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty  
4 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party  
5 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax  
6 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
7 acknowledging party of the tax treatment or tax structure of any transaction, including any  
8 transaction contemplated by this Agreement.

9       53.    Class Certification. Defendant stipulates to class certification pursuant to California  
10 Code of Civil Procedure § 382 for purposes of settlement only. If the Court does not grant either  
11 preliminary or final approval of this Settlement, the Parties agree that this stipulation regarding class  
12 certification will be revoked, and the Parties will return to a point in litigation immediately prior to  
13 the execution of this Agreement and Defendant may assert all potentially applicable defenses in  
14 connection with the Action (e.g., contest whether the Action should be maintained as a class action,  
15 contest the merits of the claims being asserted in the Action, etc.).

16       54.    Approval of Settlement. Plaintiffs will move the Court to grant preliminary and final  
17 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to  
18 have this matter presented to the Court for preliminary and final approval.

19       55.    LWDA Notice. Plaintiffs acknowledge and agree that they will provide notice to the  
20 LWDA of this Settlement in accordance with California Labor Code § 2699(1)(2).

21       56.    Release of Claims by Plaintiffs. Plaintiffs release the "Released Claims by  
22 Plaintiffs" as of the date that the Gross Settlement Amount is fully-funded by Defendant. The  
23 Settlement Administrator shall notify the Parties in writing upon receipt of the full Gross Settlement  
24 Amount.

25       57.    Release of Class Claims by Settlement Class Members. Settlement Class Members  
26 release the "Released Claims by Settlement Class Members" as of the date that the Gross Settlement  
27 Amount is fully-funded by Defendant. The Settlement Administrator shall notify the Parties in  
28 writing upon receipt of the full Gross Settlement Amount.

1           58.    Release of PAGA Claims by PAGA Aggrieved Employees. PAGA Aggrieved  
2 Employees release the “Released PAGA Claims” as of the date that the Gross Settlement Amount  
3 is fully-funded by Defendant. The Settlement Administrator shall notify the Parties in writing upon  
4 receipt of the full Gross Settlement Amount.

5           59.    Settlement Administration. Within fourteen (14) calendar days after the Preliminary  
6 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.  
7 The Class Information shall not be disclosed to Plaintiffs, Class Counsel or anyone else external to  
8 the Settlement Administrator without the written consent of Defendant, except as to certain  
9 information which may be necessary to enable Class Counsel to assist in resolution of, or otherwise  
10 respond to, any workweek disputes or objection for Class Members that may arise.

11          60.    Notice to the Class. Upon receipt of the Class Information, the Settlement  
12 Administrator will perform a search based on the National Change of Address Database to update  
13 and correct any known or identifiable address changes. Within fourteen (14) calendar days after  
14 receiving the Class Information, the Settlement Administrator shall mail copies of the Class Notice  
15 to all Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise  
16 its best judgment to determine the current mailing address for each Class Member. The address  
17 identified by the Settlement Administrator as the current mailing address shall be presumed to be  
18 the best mailing address for each Class Member.

19           a.    The Class Notice and Procedure Comports with Due Process. The Parties  
20 agree that the notice procedures outlined in this Agreement provide the best and most practical  
21 method of giving notice to the Class and fully comply with due process and all applicable laws and  
22 rules.

23           b.    Undeliverable Notices. Any Class Notice returned to the Settlement  
24 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the  
25 forwarding address affixed thereto within seven (7) calendar days. If no forwarding address is  
26 provided, the Settlement Administrator shall promptly attempt to determine a correct address by use  
27 of skip-tracing, or other search using the name, address and/or Social Security number of the Class  
28 Member involved, and shall then perform a re-mailing, if another mailing address is identified by

1 the Settlement Administrator. If the undeliverable notice is for a currently employed Class Member,  
2 the Settlement Administrator shall contact Defendant, which will then make all reasonable efforts  
3 to obtain the Class Member's current mailing address within seven (7) calendar days, and provide  
4 it to the Settlement Administrator. Class Members who receive a re-mailed Notice of Class  
5 Settlement shall have sixty (60) days after the postmark date of the re-mailed Notice of Class  
6 Settlement to: (a) submit a Request for Exclusion; (b) submit an Objection to the Settlement; or (c)  
7 dispute the number of Compensable Workweeks attributed to them.

8           c.     Disputes Regarding Individual Settlement Payments. Class Members will  
9 have the opportunity, should they disagree with Defendant's records regarding the dates of  
10 employment stated in the Class Notice and/or the number of Compensable Workweeks attributed to  
11 them, to provide documentation and/or an explanation to show contrary information by the  
12 Response Deadline. The dispute form must: (a) contain the full name, address, and telephone  
13 number of the Class Member, and the last four digits of the Class Member's social security number  
14 or full employee ID number; (b) contain the case name and case number; (c) a clear statement by  
15 the Class Member that he or she is disputing the number of Compensable Workweeks and the basis  
16 for the dispute; (d) be signed by the Class Member; and (e) be postmarked or e-mailed by the  
17 Response Deadline. The date of the postmark on the return mailing envelope on the dispute form,  
18 or the date the e-mail is sent, shall be the exclusive means used to determine whether it has been  
19 timely submitted. If there is a dispute, the Settlement Administrator will consult with the Parties to  
20 determine whether an adjustment is warranted. The Settlement Administrator shall then determine  
21 the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this  
22 Agreement. In the absence of circumstances indicating fraud, manipulation or destruction,  
23 Defendant's records shall be given a rebuttable presumption of accuracy.

24           d.     Requests for Exclusion. Class Members who wish to exclude themselves  
25 from the Settlement must mail to the Settlement Administrator a Request for Exclusion by the  
26 Response Deadline. The Request for Exclusion must: (a) contain the full name, address, and  
27 telephone number of the Class Member, and the last four digits of the Class Member's social security  
28 number; (b) contain the case name and case number; (c) a clear statement by the Class Member that

1 he or she is electing to be excluded from the Settlement; (d) be signed by the Class Member; and  
2 (e) be postmarked or e-mailed by the Response Deadline. The date of the postmark on the return  
3 mailing envelope on the Request for Exclusion, or the date the e-mail is sent, shall be the exclusive  
4 means used to determine whether it has been timely submitted. Any Class Member who requests to  
5 be excluded from the Settlement Class shall not be entitled to any Individual Settlement Payment,  
6 shall not release any of the Released Claims by Settlement Class Members, and shall not have any  
7 right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely  
8 Request for Exclusion on or before the Response Deadline shall be bound by all terms of the  
9 Settlement and any Final Approval Order and Judgment entered in this Action.

10 e. Objections. Class Members who wish to object to the Settlement may do so  
11 orally at the Final Approval Hearing without the need to submit a written Objection, or by mailing  
12 to the Settlement Administrator a written Objection by the Response Deadline. The Class Notice  
13 will inform Class Members that they appear at the final approval hearing by audio or video per the  
14 instructions listed on the Court's website. The written Objection must: (a) contain the full name,  
15 address, and telephone number of the Class Member, and the last four digits of the Class Member's  
16 social security number; (b) contain the case name and case number; (c) the dates of employment of  
17 the Class Member; (d) state whether the Class Member intends to appear at the final approval  
18 hearing; (e) be signed by the Class Member; (f) state the basis for the Objection, including any legal  
19 briefs, papers or memoranda in support of the Objection; and (g) be postmarked or e-mailed by the  
20 Response Deadline. The date of the postmark on the return mailing envelope on the written  
21 Objection, or the date the e-mail is sent, shall be the exclusive means used to determine whether the  
22 written Objection has been timely submitted. Class Members who fail to make Objections in the  
23 manner specified above shall be deemed to have waived any objections and shall be foreclosed from  
24 making any objections (whether by appeal or otherwise) to the Settlement. Class Counsel shall not  
25 represent any Class Members with respect to any Objections. The Settlement Administrator will  
26 provide the Parties with any written Objection within seven (7) calendar days of its receipt of any  
27 Objection. Plaintiffs will file any and all written Objections with the Court in advance of the Final  
28 Approval Hearing.



1           61.   Funding Gross Settlement Amount. Within fourteen (14) calendar days of the  
2 Effective Date, Defendant shall wire transfer the full Gross Settlement Amount, plus the Employer's  
3 Share of Payroll Taxes (to the extent applicable), to the Settlement Administrator.

4           62.   Allocation of Settlement. Individual Settlement Payments will be paid from the Net  
5 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual  
6 Settlement Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members'  
7 last known mailing address.

8           a.    The Settlement Administrator shall calculate the Total Compensable  
9 Workweeks for all Settlement Class Members based on the Class Information. The respective  
10 Compensable Workweeks for each Settlement Class Member will be divided by the Total  
11 Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each  
12 Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be multiplied  
13 by the Net Settlement Amount to determine his or her Individual Settlement Payment.

14           b.    The Settlement Administrator shall calculate the total PAGA Workweeks for  
15 all PAGA Aggrieved Employees based on the Class Information. The respective PAGA  
16 Workweeks for each PAGA Aggrieved Employee will be divided by the total PAGA Workweeks  
17 for all PAGA Aggrieved Employees, resulting in the PAGA Payment Ratio for each PAGA  
18 Aggrieved Employee. Each PAGA Aggrieved Employee's PAGA Payment Ratio will then be  
19 multiplied by \$15,000 to determine his or her Individual PAGA Payment.

20           c.    In light of the Class Members' classification as Independent Contractors, one  
21 hundred percent (100%) of the Individual Settlement Payment and Individual PAGA Payment shall  
22 represent payment for penalties, interest, and miscellaneous income. These payments will not be  
23 subject to withholding of local, state, and federal taxes. If required, the Settlement Administrator  
24 shall issue an IRS Form 1099 to each Settlement Class Member in relation to these payments.

25           d.    Un-Negotiated Settlement Checks. Individual Settlement Payment checks  
26 shall remain negotiable for one hundred and twenty (120) calendar days from the postmark date of  
27 issuance. If the Individual Settlement Payment check is not cashed, deposited, or otherwise  
28 negotiated within the 120-day deadline, the check will be voided, and the funds associated with any

1 such voided checks shall be distributed to the Cy Pres Recipient. The Parties represent that they do  
2 not have an interest in the governance or work of the Cy Pres Recipient. Should a conflict of interest  
3 or other issue lead to the disapproval of Legal Aid at Work as a Cy Pres Recipient, the Parties will  
4 meet and confer as to a suitable replacement. In compliance with California Code of Civil Procedure  
5 § 384, after all amounts paid to Class Members have been made (i.e., the time for Class Members  
6 to negotiate the checks has expired), the Settlement Administrator shall provide a report, and if there  
7 are any remaining unclaimed funds (i.e., funds from checks not negotiated by Class Members), the  
8 Final Approval Order and Judgment shall be amended to direct said funds to be paid to Legal Aid  
9 at Work or other Court-approved Cy Pres Recipient.

10 e. Certification by Settlement Administrator. The Parties have the right to  
11 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement  
12 Administrator concerning the administration of the Settlement will be resolved by the Court, under  
13 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties  
14 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon  
15 completion of administration of the Settlement, the Settlement Administrator shall provide written  
16 certification of such completion to counsel for the Parties, and which shall be filed with the Court  
17 as necessary.

18 f. Settlement Awards Do Not Trigger Additional Benefits. All monies received  
19 by Settlement Class Members shall be deemed to be income to such Settlement Class Members  
20 solely in the year in which such awards actually are received by the Settlement Class Members. It  
21 is expressly understood and agreed that the receipt of such Individual Settlement Payments will not  
22 entitle any Settlement Class Member to additional compensation or benefits under any company  
23 compensation or benefit plan or agreement in place during the period covered by the Settlement,  
24 nor will it entitle any Settlement Class Member to any increased pension and/or retirement, or other  
25 deferred compensation benefits. It is the intent of this Settlement that any Individual Settlement  
26 Payments provided for in this Agreement are the sole payments to be made by Defendant to the  
27 Settlement Class Members in connection with this Settlement, and that the Settlement Class  
28 Members are not entitled to any new or additional compensation or benefits as a result of having

1 received the Individual Settlement Payments (notwithstanding any contrary language or agreement  
2 in any benefit or compensation plan document that might have been in effect during the period  
3 covered by this Settlement).

4 g. Class Representative Service Awards. Defendant agrees not to oppose or  
5 object to a Class Representative Service Award in the total amount of up to Twenty Thousand  
6 Dollars (\$20,000.00) (\$5,000.00 to each of the four Plaintiffs), subject to Court approval. The  
7 Settlement Administrator shall issue an IRS Form 1099 – MISC to Plaintiffs in connection with the  
8 Class Representative Service Award payments. Plaintiffs shall be solely and legally responsible to  
9 pay any and all applicable taxes on their Class Representative Service Awards and shall hold  
10 harmless Defendant and Class Counsel from any claim or liability for taxes, penalties, or interest  
11 arising as a result of the Class Representative Service Award payment. The Class Representative  
12 Service Awards shall be in addition to Plaintiffs’ Individual Settlement Payments and Individual  
13 PAGA Payments. This Settlement is not contingent upon the Court awarding Plaintiffs a Class  
14 Representative Service Award in any amount. Any amounts requested by Plaintiffs for the Class  
15 Representative Service Awards that are not granted by the Court shall return to the Net Settlement  
16 Amount and be distributed to Settlement Class Members as provided in this Agreement.

17 h. Class Counsel Award. Defendant agrees not to oppose or object to any  
18 application or motion by Class Counsel for attorneys’ fees not to exceed one-third from the Gross  
19 Settlement Amount, or One Hundred Seventy-Seven Thousand Seven Hundred Fifty Dollars and  
20 Zero Cents (\$177,750.00). Defendant further agrees not to oppose any application or motion by  
21 Class Counsel for the reimbursement of any costs or expenses associated with Class Counsel’s  
22 prosecution of this matter from the Gross Settlement Amount not to exceed Twenty Thousand  
23 Dollars (\$20,000.00). Class Counsel shall be solely and legally responsible to pay all applicable  
24 taxes on the payment made pursuant to this paragraph. The Settlement Administrator shall issue an  
25 IRS Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This  
26 Settlement is not contingent upon the Court awarding Class Counsel any particular amount in  
27 attorneys’ fees and costs. Any amount requested by Class Counsel for the Class Counsel Award that  
28

1 is not granted by the Court shall return to the Net Settlement Amount and be distributed to  
2 Settlement Class Members as provided in this Agreement.

3 i. Settlement Administration Costs. The Settlement Administrator shall be paid  
4 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of  
5 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed  
6 \$3,000.00. Any amount requested by Class Counsel for the Settlement Administration Costs that is  
7 not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement  
8 Class Members as provided in this Agreement.

9 j. Payment to the LWDA. Sixty Thousand Dollars (\$60,000.00) from the Gross  
10 Settlement Amount will be allocated to penalties under the Private Attorneys General Act of 2004.  
11 Seventy-five percent (75%) of that amount, or Forty-Five Thousand Dollars (\$45,000.00), will be  
12 paid to the LWDA and twenty-five percent (25%) of that amount, or Fifteen Thousand Dollars  
13 (\$15,000.00), will be paid to the PAGA Aggrieved Employees. This payment is made pursuant to  
14 California Labor Code § 2699(i).

15 63. Distribution of Settlement Payments. Individual Settlement Payments to Settlement  
16 Class Members, Individual PAGA Payments to Aggrieved Employees, the Class Representative  
17 Service Awards, the Class Counsel Award, Settlement Administration Costs, and payment to the  
18 LWDA, shall all be distributed by the Settlement Administrator within seven (7) calendar days of  
19 receipt by the Settlement Administrator of the Gross Settlement Amount from Defendant. No person  
20 shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, Settlement Class Members,  
21 PAGA Aggrieved Employees, Class Counsel, or the Settlement Administrator based on  
22 distributions and payments made in accordance with this Agreement.

23 64. Number of Workweeks. Prior to the mediation, Defendant represented that there are  
24 66 Class Members who have worked approximately 9,134 Workweeks during the Class Period. This  
25 is a material representation, and if at the time Defendant provides the Class Information to the  
26 Settlement Administrator it is discovered that Class Members have worked 10,047 Workweeks or  
27 more during the Class Period (a 10% increase), then the Parties stipulate that the Class Period shall  
28

1 end on the date one calendar day immediately prior to the date that the 10,047th Workweek threshold  
2 is met, notwithstanding the definition of the Class Period in Paragraph 8 of this Agreement.

3 65. Final Settlement Approval. Upon expiration of the Response Deadline, a Final  
4 Approval Hearing shall be conducted by the Court, and if the Settlement is finally approved, whether  
5 to enter the Final Approval Order and Judgment.

6 66. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the  
7 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the  
8 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;  
9 or (d) the Settlement does not become final for any other reason, this Settlement Agreement shall  
10 be null and void and any order or judgment entered by the Court in furtherance of this Settlement  
11 shall be treated as void from the beginning. In such cases, the Parties and any funds to be awarded  
12 under this Settlement shall be returned to their respective statuses as of the date and time  
13 immediately prior to the execution of this Agreement and the Parties shall proceed in all respects as  
14 if this Agreement had not been executed, except that any fees already incurred by the Settlement  
15 Administrator shall be paid by Defendant. In the event an appeal is filed from the Court's Final  
16 Approval Order and Judgment, or any other appellate review is sought, administration of the  
17 Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any  
18 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal  
19 from the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid  
20 to the Settlement Administrator by the party or person that filed the appeal, within thirty (30)  
21 calendar days of said notification. Additionally, if the number of Class Members who opt out by  
22 submitting Requests for Exclusion meets or exceeds 10% of the total number of Class Members,  
23 then Defendant may, in the exercise of its sole discretion, abrogate this Agreement. Defendant's  
24 right expires 15 business days after the expiration of the Response Deadline. In the event Defendant  
25 exercises this option, the costs of administration shall be borne by Defendant.

26 67. No Effect on Employee Benefits. Amounts paid to Plaintiffs or other Settlement  
27 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall  
28

1 not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g.,  
2 vacations, holiday pay, retirement plans, etc.) of Plaintiffs or Settlement Class Members.

3 68. No Admission by Defendant. Defendant denies any and all claims alleged in this  
4 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or  
5 admission, and shall not be used against Defendant as an admission or indication with respect to any  
6 claim of any fault, concession, or omission by any Defendant.

7 69. Confidentiality. Defendant, Plaintiffs and Class Counsel will not publicize the  
8 Settlement in any way, including but not limited to in the form of press releases or on counsel's firm  
9 websites, except as follows: Nothing in this Memorandum shall preclude Plaintiffs' Counsel from  
10 communicating with members of the Settlement Class after preliminary approval, and after  
11 preliminary approval Plaintiffs' Counsel is permitted to post court-filed documents on their website  
12 for viewing by the Settlement Class, and Plaintiffs' counsel may refer to this case in their CV's or  
13 other similar documents that are filed with a court or in another legal forum relating to counsel's  
14 prior experience and qualifications.

15 70. Exhibits and Headings. The terms of this Settlement Agreement include the terms  
16 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth  
17 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive  
18 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference  
19 only and do not constitute a part of this Agreement.

20 71. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,  
21 except such proceedings necessary to implement and complete the Settlement, holding the Action  
22 in abeyance pending the final approval hearing to be conducted by the Court.

23 72. Amendment or Modification. This Agreement may be amended or modified only by  
24 a written instrument signed by counsel of record for all Parties, subject to the approval of the Court.

25 73. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute  
26 the entire Agreement among these Parties, and no oral or written representations, warranties, or  
27 inducements have been made to any Party concerning this Agreement or its Exhibits other than the  
28

1 representations, warranties, and covenants contained and memorialized in the Agreement and its  
2 Exhibits.

3 74. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant  
4 and represent they are expressly authorized by the Parties whom they represent to negotiate this  
5 Agreement and to take all appropriate actions required or permitted to be taken by such Parties  
6 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to  
7 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other  
8 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are  
9 unable to reach agreement on the form or content of any document needed to implement the  
10 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms  
11 of this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such  
12 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant  
13 that they are authorized to sign this Agreement on behalf of Defendant. Plaintiffs represent and  
14 warrant that they are authorized to sign this Agreement and that they have not assigned any claim,  
15 or part of a claim, covered by this Settlement to a third-party.

16 75. Binding on Successors and Assigns. This Agreement shall be binding upon, and  
17 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

18 76. California Law Governs. All terms of this Settlement Agreement and the Exhibits  
19 hereto shall be governed by and interpreted according to the laws of the State of California.

20 77. Counterparts and Signatures. This Settlement Agreement may be executed in one or  
21 more counterparts. All executed counterparts and each of them shall be deemed to be one and the  
22 same instrument. The Parties agrees that a facsimile, PDF, or electronic signatures shall be deemed  
23 to be as valid and enforceable as original ink signatures. The Parties further agree that they may use  
24 DocuSign, an electronic signature technology, to expedite the execution of this Agreement, pursuant  
25 to California Civil Code § 1633.7.

26 78. This Settlement is Fair, Adequate and Reasonable. The Parties believe this  
27 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this  
28

1 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present  
2 and potential.

3 79. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure § 664.6,  
4 the Court shall retain jurisdiction with respect to the interpretation, implementation, and  
5 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in  
6 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court  
7 for purposes of interpreting, implementing, and enforcing the Settlement embodied in this  
8 Agreement and all orders and judgments entered in connection therewith. All terms of this  
9 Settlement Agreement are subject to approval by the Court.

10 80. Invalidity of Any Provision. Before declaring any provision of this Settlement  
11 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent  
12 possible consistent with applicable precedents so as to define all provisions of this Agreement valid  
13 and enforceable.

14 81. Enforcement Action. In the event that one more of the Parties institutes any legal  
15 action or other proceeding against any other Party or Parties to enforce the provisions of this  
16 Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the  
17 successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties  
18 reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any  
19 enforcement actions.

20 11/18/2021  
21 Dated: \_\_\_\_\_

DocuSigned by:  
*Scott Osko*  
96B5291013C4423...

By: \_\_\_\_\_  
Plaintiff Scott Osko

22  
23 11/17/2021  
24 Dated: \_\_\_\_\_

DocuSigned by:  
*DB*  
0B48A416330247B...

By: \_\_\_\_\_  
Plaintiff David Becerra

25  
26 11/17/2021  
27 Dated: \_\_\_\_\_

DocuSigned by:  
*David J. Beaudoin*  
87A028A3B0CD416...

By: \_\_\_\_\_  
Plaintiff David Beaudoin

28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

11/17/2021

Dated: \_\_\_\_\_

DocuSigned by:

*Michael Lang*

2B8660CF6DAA49B...

By: \_\_\_\_\_

Plaintiff Michael Lang

11/16/2021

Dated: \_\_\_\_\_

*Michael Speirs*

By: \_\_\_\_\_

Defendant The Elite Group Property Inspection Service, Inc.

Name: MICHAEL SPEIRS

Title: CHIEF OPERATING OFFICER

**APPROVED AS TO FORM ONLY:**

THE WAND LAW FIRM, P.C.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Aubry Wand

THE LAW OFFICE OF SCOTT E. WHEELER

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Scott E. Wheeler

*Counsel for Plaintiffs and the Putative Class*

SEYFARTH SHAW LLP

Dated: November 16, 2021

By: \_\_\_\_\_

*Michael A. Wahlander*

Michael A. Wahlander  
Timothy M. Hoppe

*Counsel for Defendant The Elite Group Property Inspection Service, Inc.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Michael Lang

Dated: 11/16/2021

By:   
Defendant The Elite Group Property Inspection Service, Inc.

Name: MICHAEL SPEIRS

Title: CHIEF OPERATING OFFICER

**APPROVED AS TO FORM ONLY:**


THE WAND LAW FIRM, P.C.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Aubry Wand

THE LAW OFFICE OF SCOTT E. WHEELER

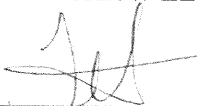
Dated: 11/18/21

By:   
Scott E. Wheeler

*Counsel for Plaintiffs and the Putative Class*

SEYFARTH SHAW LLP

Dated: November 16, 2021

By:   
Michael A. Wahlander  
Timothy M. Hoppe

*Counsel for Defendant The Elite Group Property Inspection Service, Inc.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Plaintiff Michael Lang

Dated: 11/16/2021

By:   
Defendant The Elite Group Property Inspection  
Service, Inc.

Name: MICHAEL SPEIRS

Title: CHIEF OPERATING OFFICER

**APPROVED AS TO FORM ONLY:**

THE WAND LAW FIRM, P.C.

Dated: 11/17/2021

By:   
Aubry Wand

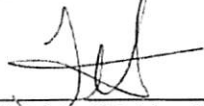
THE LAW OFFICE OF SCOTT E. WHEELER

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Scott E. Wheeler  
*Counsel for Plaintiffs and the Putative Class*

SEYFARTH SHAW LLP

Dated: November 16, 2021

By:   
Michael A. Wahlander  
Timothy M. Hoppe  
*Counsel for Defendant The Elite Group Property  
Inspection Service, Inc.*

# **Exhibit 1**

## CLASS NOTICE

*A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.*

### **Why should you read this Notice?**

A proposed settlement (the “Settlement”) has been reached in the class action lawsuit entitled *Osko, et al. v. The Elite Group Property Inspection Service, Inc.*, California Superior Court, County of Los Angeles, Case No. 20STCV28718 (the “Action”).

According to Defendant’s records, you have been identified as a member of the Class, and therefore are receiving this Notice. Also according to Defendant’s records, your estimated share of the “Net Settlement Amount” is \$\_\_\_\_\_ and your share of the PAGA Payment is \$\_\_\_\_\_. Your settlement payment is only an estimate; it may be higher or lower than estimated. See below for additional details.

Your options are further explained in this Notice. To exclude yourself from, or object to the Settlement, you must take action by certain deadlines. If you want to participate in the Settlement as proposed, you don’t need to do anything to obtain your share of the settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
<b>DO NOTHING</b>	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits. You will also give up your rights to pursue a separate legal action against The Elite Property Inspection Service, Inc. (“Defendant”), for the claims released under the Settlement.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS</b>	If you do not wish to participate in the Settlement, you may exclude yourself by submitting a written request to be excluded. However, if you do so, you will not receive any payment under the Settlement.
<b>OBJECT</b>	To object to the Settlement, you may object orally at the Final Approval Hearing, or you may write to the Settlement Administrator about why you don’t like the Settlement. This option is available only if you do not exclude yourself from the Settlement.

### **Who is affected by this proposed Settlement?**

The Court has certified, for settlement purposes only, the following Class:

All Property Inspectors who were classified as independent contractors by Defendant, and who performed work for Defendant in California, from July 30, 2016 to \_\_\_\_\_.

According to Defendant’s records, you are a member of the Class (a “Class Member”).

**Insert if appropriate:** Also according to Defendant’s records, you were classified as an independent contractor by Defendant, and performed work in California as a Property Inspector, from July 16, 2019 to \_\_\_\_\_, and are therefore a PAGA Aggrieved Employee as well.

### **What is this case about?**

In the Action, Plaintiffs allege on behalf of themselves and the Class the following claims against Defendant: (1) willful misclassification as independent contractors; (2) failure to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to pay overtime wages; (5) failure to timely pay minimum wages; (6) failure to timely pay wages during employment; (7) failure to pay all wages owed and due at termination of employment; (8) failure to maintain required records; (9) failure to provide accurate itemized wage statements; (10) failure to

reimburse business expenses; (11) failure to produce or make available requested records; (12) violation of the California Unfair Competition Law; and (13) and violation of the California Private Attorneys' General Act.

Defendant denies any and all wrongdoing, and maintains that it has complied with all laws alleged to have been violated in the Operative Complaint. Defendant notes that this Settlement was established specifically to avoid the cost of proceeding with litigation and does not constitute an admission of liability by Defendant. The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses, however, the Court has granted preliminary approval of this Settlement.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiffs and Defendant (the "Parties"), through their attorneys and a mediator. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiffs and Class Counsel believe this Settlement is in the best interests of the Class.

***Who are the attorneys in this Lawsuit?***

**Class Counsel**

**THE LAW OFFICE OF SCOTT E. WHEELER**  
Scott E. Wheeler  
250 West First Street, Ste. 216  
Claremont, CA 91711  
Telephone: (909) 621-4988

**Defendant's Counsel**

**SEYFARTH SHAW LLP**  
Michael A. Wahlander  
560 Mission Street, 31st Floor  
San Francisco, CA 94105  
Telephone: (415) 397-2823

***What will I receive under the Settlement?***

Subject to final Court approval, Defendant will pay \$435,425, which in addition to \$97,825 that Defendant has already paid to some Class Members ("Pick-up Stix Payments"), constitutes a total sum of \$533,250 (the "Gross Settlement Amount"). It is estimated that, subject to Court approval, after deducting the attorney's fees and costs, service awards to Plaintiffs, payment to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees for PAGA penalties, Pick-up Stix Payments, and settlement administration costs from Gross Settlement Amount, there will be a Net Settlement Amount of at least \$154,675.

From this Net Settlement Amount, Individual Settlement Payments will be paid to each Class Member who does not opt out of the Settlement Class ("Settlement Class Member"). The Net Settlement Amount shall be divided among all Settlement Class Members based on the ratio of the number of Compensable Workweeks worked by each Settlement Class Member to the total number of Workweeks worked by all Settlement Class Members, calculated based on Defendant's records.

According to Defendant's records, during the period of July 30, 2016 to [REDACTED], you worked [REDACTED] Compensable Workweeks in California as a Property Inspector, and therefore, your settlement payment as a Class Member is estimated to be \$ [REDACTED].

**Insert if appropriate:** According to Defendant's records, during the period of July 16, 2019 to [REDACTED], you worked [REDACTED] Compensable Workweeks in California as a Property Inspector, and therefore, your PAGA payment is estimated to be \$ [REDACTED].

Your settlement payment is only an estimate. Your actual settlement payment may be higher or lower than estimated.

If you wish to dispute the number of Compensable Workweeks credited to you, you must submit a written dispute to the Settlement Administrator at [REDACTED] by mail, postmarked no later than

[Response Deadline], or by e-mail to [redacted]. The dispute must: (1) contain your full name, current address, telephone number, the last four digits of your Social Security number or full employee ID number; (2) contain the case name and case number; (3) contain a clear statement explaining that you wish to dispute the number of Compensable Workweeks and the basis for your dispute; and (4) and be signed by you. You may also wish to attach any documentation in support of your dispute.

***When and how will I receive payment?***

If the Court grants final approval of the Settlement, and only after the Effective Date of the Settlement defined below, the Settlement Administrator will send you a settlement check. The settlement approval process takes time so please be patient.

Any settlement payment checks mailed to you under the Settlement shall remain negotiable for 120 days. If you do not negotiate (e.g., cash or deposit) a settlement check within this time period, you will be unable to receive those funds, but you will remain bound by the terms of the Settlement. Any funds that are not timely negotiated by Settlement Class Members will be paid to Legal Aid at Work, a 501(c)(3) organization that is dedicated to protecting the rights of low-income people throughout California.

Your settlement payment will be allocated 100% for penalties, interest and miscellaneous income. None of the Parties or attorneys make any representations concerning the tax implications of this payment. Settlement Class Members may wish to consult with their own tax advisors concerning the tax consequences of the Settlement.

***How will the lawyers be paid and how will other funds under the Settlement be distributed?***

Class Counsel will ask the Court to award attorneys' fees up to \$177,750 (1/3 of the Gross Settlement Amount) and reimbursement of reasonable litigation costs of up to \$20,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Award payments of up to \$20,000 (\$5,000 to each of the four Plaintiffs) for their efforts in representing the Class. The cost of administering the Settlement will not exceed \$3,000. A payment in the amount of \$45,000 will also be made to the LWDA for its share of PAGA penalties, while \$15,000 will be paid to PAGA Aggrieved Employees. Any of these amounts not awarded by the Court will be included in the Net Settlement Amount and will be distributed to Settlement Class Members. \$97,825 has already been paid to 54 Class Members, after receiving (and in response to) Plaintiffs' notice letter submitted pursuant to California Labor Code § 2699.3, and before the Parties participated in mediation.

***What claims are being released by the proposed Settlement?***

As of the date that the Gross Settlement Amount is fully-funded by Defendant, and in exchange for the consideration provided under this Settlement, Settlement Class Members shall fully and finally release and discharge Released Parties, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, pleaded or that could have been pleaded based on facts and claims asserted in the operative Complaint, including: any and all claims for: (a) willful misclassification of employees as independent contractors; (b) failure to prove meal periods; (c) failure to provide rest breaks; (d) failure to overtime wages; (e) failure to pay minimum wages; (f) failure to pay timely wages; (g) failure to pay all wages owed and due upon termination; (h) failure to maintain required records; (i) failure to furnish accurate itemized wage statement; (j) failure to provide reimbursement for employment-related expenses; (k) failure to produce or make available requested records; (l) violation of California Business & Professions Code section 17200, *et seq.*; and (m) violation of California Private Attorneys' General Act, California Labor Code § 2699, *et seq.*, predicated on any of the violations of the California Labor Code and applicable IWC Wage Order alleged in the operative Complaint. This release shall apply to all claims arising at any point during the Class Period.

In addition, PAGA Aggrieved Employees will release all claims for civil penalties under the PAGA that Plaintiffs, on behalf of themselves, the State of California, and all PAGA Aggrieved Employees, disclosed in Plaintiffs' LWDA letter (which is attached to the Amended Settlement Agreement as Exhibit 3) and

that Plaintiffs and PAGA Aggrieved Employees are fully and irrevocably releasing the Released Parties from, in exchange for the consideration provided by this Settlement. PAGA Aggrieved Employees will only release claims alleged in, or that could have been alleged, based on the facts asserted in Plaintiffs' LWDA Letter. PAGA Aggrieved Employees will release the PAGA Claims even if they, as a Class Member, request exclusion from the class. Released PAGA Claims include any claims for attorneys' fees, costs, or other damages that may be recoverable under the PAGA claims that are alleged or could have been alleged in the Operative complaint. This release shall apply to PAGA claims arising at any point during the PAGA Period.

Released Parties are Defendant and its predecessors, successors, subsidiaries, parent companies, other corporate affiliates, owners and assigns, and all of their officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

The Effective Date is the date on which the Court's Final Approval Order and Judgment becomes final. The Court's Final Approval Order and Judgment "becomes final" upon the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is entered by the Court; (b) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is entered by the Court; or (c) if there is an Objection to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is entered by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief.

### ***What are my options?***

You have several options under this Settlement. You may: (A) remain in the Class and receive payment under the Settlement; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement.

**OPTION A. Remain in the Class.** If you remain in the Class, you will receive payment and be represented by Class Counsel. If you wish to remain in the Class and be eligible to receive a payment under the Settlement, you do *not* need to take any action. By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

**OPTION B. If You Do Not Want To Be Bound By The Settlement.** If you do not want to be part of the Settlement, you must mail a Request for Exclusion to the Settlement Administrator at [REDACTED] or e-mail a Request for Exclusion to [REDACTED]. Your Request for Exclusion must: (1) contain your full name, address, and telephone number, the last four digits of your social security number; (2), contain the case name and case number; and (3) a clear statement you are electing to be excluded from the Settlement; and (4) be signed by you. In order to be timely, your Request for Exclusion must be postmarked, or e-mailed, on or before [REDACTED]. If you do not submit a valid and timely Request for Exclusion, your Request for Exclusion will be rejected, you will be deemed a member of the Settlement Class, and you will be bound by the release of Released Claims as described above. If you submit a valid and timely Request for Exclusion, you will *not* be entitled to any payment as a Class Member from the Net Settlement Amount but you will preserve all of the legal claims asserted in this Action against Defendant. If you are a PAGA Aggrieved Employee, you will still receive a PAGA payment and be subject to the PAGA release outlined above.

**Objecting to the Settlement:** If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you can appear at the Final Approval Hearing and make an oral objection. You have the option to appear by audio or video. If you wish to do so, please follow the instructions listed at: <https://my.lacourt.org/laccwelcome>. If you wish to object in writing, you must mail to the Settlement Administrator at [REDACTED], a written statement of objection, or e-mail



the written objection to [REDACTED]. The written objection must: (1) contain your full name, address, and telephone number, the last four digits of your social security number; (2), contain the case name and case number; (3) the dates of your employment with Defendant; (4) state whether you intend to appear at the final approval hearing; (5) state the basis for the Objection, including any legal briefs, papers or memoranda in support of the Objection; and (6) be signed by you. In order to be timely, the written objection must be postmarked, or e-mailed, on or before [REDACTED]. Class Counsel will provide the Court with your written objection prior to the Final Approval Hearing. You can also hire an attorney at your own expense to represent you in your objection.

**You cannot object to the Settlement if you request exclusion from the Settlement.**

***What is the next step in the approval of the Settlement?***

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement and the plan of distribution of the payments described herein, on [REDACTED] in Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

***How can I get additional information?***

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Los Angeles County Superior Court, located at 111 North Hill Street, Los Angeles, CA 90012. You must make an appointment to view the documents in the Clerk's Office. You can also visit the settlement website located at: [REDACTED] for more information, including a copy of the Settlement Agreement.

**PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE**

# **Exhibit 2**

1 **LAW OFFICE OF SCOTT E. WHEELER**

2 Scott. E. Wheeler (SBN 187998)  
3 250 West First Street, Suite 216  
4 Claremont, CA 91711  
5 Telephone: (909) 621-4988  
6 Facsimile: (909) 621-4622  
7 E-mail: sew@scottwheelerlawoffice.com

8 **THE WAND LAW FIRM, P.C.**

9 Aubry Wand (SBN 281207)  
10 400 Corporate Pointe, Suite 300  
11 Culver City, CA 90230  
12 Telephone: (310) 590-4503  
13 Facsimile: (310) 590-4596  
14 Email: awand@wandlawfirm.com

15 *Attorneys for Plaintiffs and the Putative Class*

16  
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**  
19

20 SCOTT OSKO, DAVID BECERRA, DAVID,  
21 DAVID BEAUDOIN, and MICHAEL LANG,  
22 individually, and on behalf of all others similarly  
23 situated,

24 Plaintiffs,

25 v.

26 THE ELITE GROUP PROPERTY  
27 INSPECTION SERVICE, INC., a California  
28 corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 20STCV28718

[Hon. Maren E. Nelson]

**[PROPOSED] PRELIMINARY APPROVAL  
ORDER**

Date: October 13, 2021  
Time: 9:00 a.m.  
Dept.: SS17

Action Filed: July 30, 2020  
Trial Date: None Set

1 **[PROPOSED] PRELIMINARY APPROVAL ORDER**

2 The Court now has before it Plaintiffs Scott Osko, David Becerra, David Beaudoin, and Michael  
3 Lang (“Plaintiffs”)’s unopposed Motion for Preliminary Approval of Class Action Settlement  
4 (“Motion”). After reviewing the Motion, the Class Action Settlement Agreement and Release  
5 (“Settlement Agreement”)<sup>1</sup> and exhibits attached thereto, and good cause appearing therefore, the Court  
6 hereby finds and orders as follows:

7 1. The Court finds on a preliminary basis that the settlement memorialized in the Settlement  
8 Agreement appears to be fair and adequate, and falls within the range of reasonableness, and therefore  
9 meets the requirement for preliminary approval.

10 2. The Court conditionally certifies for settlement purposes the following Class:

11 All Property Inspectors who were classified as independent contractors by Defendant, and who  
12 performed work for Defendant in California, during the Class Period.

13 The Class Period is July 30, 2016 to [REDACTED].

14 3. The Court finds, for settlement purposes, that the Class meets the requirements for  
15 certification under California Code of Civil Procedure § 382 in that: (a) the Class is so numerous that  
16 joinder is impractical; (b) there are questions of law and fact that are common, or of general interest, to  
17 the Class, which predominate over any individual issues; (c) Plaintiffs’ claims are typical of the claims of  
18 the Class; (d) Plaintiffs and their counsel will fairly and adequately protect the interests of the Class; and  
19 (e) a class action is superior to other available methods for the fair and efficient adjudication of the  
20 controversy.

21 4. The Court appoints, for settlement purposes, Plaintiffs Scott Osko, David Becerra, David  
22 Beaudoin, and Michael Lang as Representatives for the Class.

23 5. The Court appoints, for settlement purposes, the Law Office of Scott E. Wheeler and the  
24 Wand Law Firm, P.C., as Counsel for the Class.

25 6. The Court appoints ILYM Group, Inc. as the Settlement Administrator.

26  
27 \_\_\_\_\_  
28 <sup>1</sup> All capitalized terms have the same meaning a defined in the Settlement Agreement unless otherwise indicated.

1           7.     The Parties are ordered to carry out the Settlement according to the following  
2 implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class Information	
Last day for Settlement Administrator to mail Class Notice	
Last day for Class Members to submit a dispute re. Workweeks, Request for Exclusion, or written Objection	
Last Day for Plaintiffs to file Motion for Final Approval and Motion for Attorneys' Fees and Costs and Class Representative Service Awards	
Final Approval Hearing	

13           8.     The Court approves as to form and content the Class Notice (attached as Exhibit 1 to the  
14 Settlement Agreement).

15           9.     The Court finds that the method of giving notice to the Class constitutes the best means  
16 practicable of providing notice under the circumstances. The Court further finds that the Class Notice and  
17 the method of giving notice to the Class meet the requirements of California Code of Civil Procedure §  
18 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the California and United  
19 States Constitutions, and other applicable law.

20           10.    At the Final Approval Hearing, the Court will consider, *inter alia*, whether the Settlement  
21 should be finally approved as fair, reasonable and adequate, whether a final judgment should be entered  
22 in favor of Plaintiffs, and whether the payments provided for under the Settlement, including attorneys'  
23 fees and costs and class representative service awards, should be finally approved and granted.

24 ///

25 ///

26 ///

27 ///

28 ///

1           11. Pending the Final Approval Hearing, all proceedings in this Action, other than  
2 proceedings necessary to implement the Settlement and this Order, are stayed.

3           **IT IS SO ORDERED.**

4  
5 DATED: \_\_\_\_\_

\_\_\_\_\_  
6 Honorable Maren E. Nelson  
7 Judge of the Superior Court  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 3**

SCOTT E. WHEELER  
ATTORNEY AT LAW  
250 WEST FIRST STREET, SUITE 216  
CLAREMONT, CALIFORNIA 91711  
TELEPHONE (909) 621-4988  
FACSIMILE (909) 621-4622  
sew@scottwheelerlawoffice.com

July 13, 2020

**Filed Online**

Labor and Workforce Development Agency /  
Department of Industrial Relations  
Private Attorneys General Act (PAGA) - Filing  
New PAGA Claim Notice

**Via Certified U.S. Mail – Return  
Receipt Requested**

The Elite Group Property Inspection Service, Inc.  
2641 Hamner Ave, Suite #201  
Norco, California 92860

The Elite Group Property Inspection Service, Inc.  
Dennis Hicks (Designated Agent for Service of Process)  
4241 Jutland Drive, Suite 308  
San Diego, CA 92117

The Elite Group Property Inspection Service, Inc.  
21700 East Copley, Suite 390  
Diamond Bar, California 91765

**Re: Notice Pursuant to California Labor Code § 2699.3**

Dear Representative(s) of The Elite Group Property Inspection Services, Inc. and of the Labor and Workforce Development Agency:

This office represents David Becerra, David Beaudoin, Michael Lang and Scott Osko, former employees of The Elite Group Property Inspection Service, Inc. ("The Elite Group"). Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California Labor Code § 2698 *et seq.*, this letter sets forth the specific provisions of the California Labor Code and Industrial Welfare Commission ("IWC") Wage Order No. 4-2001, and any other applicable IWC wage orders, which Messrs. Becerra, Beaudoin, Lang and Osko allege that The Elite Group has violated, including the facts and theories to support the alleged violations.



California Labor & Workforce Development Agency  
The Elite Group Property Inspection Service, Inc.  
July 13, 2020  
Page 2 of 14

Please be advised that this letter constitutes written notice required by California Labor Code §§ 2699.3(a)(1) and 2699.3(c)(1) and may lead to immediate action against The Elite Group in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against The Elite Group.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the California Labor Code, applicable IWC wage orders, or regulations thereunder which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice is hereby given to The Elite Group and any and all related and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

#### **PRELIMINARY STATEMENT**

My office is investigating a representative action on behalf of current and former non-exempt employees of The Elite Group in the State of California during the one (1) year preceding the date of this notice letter (“aggrieved employees”) regarding: The Elite Group’s misclassification of Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees as independent contractors and not as employees, in violation of California Labor Code §§ 226.8 and 2750.3; failure to provide meal and rest periods to non-exempt employees, in violation of California Labor Code §§ 226.7, 510, 512, 1194, 1197, and Wage Order No. 4-2001,<sup>1</sup> §§ 11-12; failure to pay one additional hour of compensation to non-exempt employees at their regular rate of pay for each workday that a meal or rest period is not provided, in violation of California Labor Code § 226.7 and Wage Order No. 4-2001, §§ 11(B) and 12(B); failure to pay non-exempt employees overtime wages, and failure to properly calculate overtime wages, in violation of California Labor Code §§ 510, 1194, 1198, and Wage Order No. 4-2001, § 4; failure to pay non-exempt employees minimum wages for all hours worked, in violation of California Labor Code §§ 1194, 1197, 1197.1, and Wage Order No. 4-2001, § 4; failure to pay non-exempt employees the unpaid balance of the full amount of minimum wage or overtime compensation, including interest, in violation of California Labor Code § 1194; failure to timely pay non-exempt employees all wages due, in violation of California Labor Code § 204; willful failure to pay discharged or quitting non-exempt employees all wages due, in violation of California Labor Code §§ 201-203; failure to provide accurate itemized wage statements to non-exempt employees in violation of California Labor Code §§ 226, 1174, and 1174.5; failure to maintain required records of non-exempt employees, in violation of California Labor Code §§ 1174, 1174.5, and Wage Order No.

---

<sup>1</sup> Hereinafter, when reference is made to Wage Order 4, it shall include reference to corresponding sections of any other wage orders that may be or are applicable.

4-2001, § 7; failure to produce required records to employees, in violation of California Labor Code § 226, 1198.5, and Wage Order No. 4-2001, § 7; failure to indemnify aggrieved employees for employment expenditures, and/or losses, in violation of California Labor Code § 2802; violation of California Labor Code § 232 regarding the prohibition against an employer mandating that wages are confidential; and failure to provide notice to non-exempt employees as required under California Labor Code § 2810.5.

### FACTS AND THEORIES

Messrs. Becerra, Beaudoin, Lang, Osko and the aggrieved employees worked out of The Elite Group's office located 2641 Hamner Avenue, Suite 201, Norco, California. The Elite Group also maintained an office at 21700 East Copley, Suite 390, Diamond Bar, California 91765.

Messrs. Becerra, Beaudoin, Lang and Osko, on behalf of themselves and all other aggrieved employees, hereby allege the following facts and theories:

#### **I. Willful Misclassification of Inspectors as Independent Contractors Instead of Employees by The Elite Group**

The Elite Group misclassified and continues to misclassify Messrs. Becerra, Beaudoin, Lang, Osko and aggrieved employees as independent contractors when they are in fact employees of The Elite Group, in violation of the California Labor Code and California law.

California Labor Code § 226.8 provides it is unlawful for any person or employer to engage in the "willful misclassification" of an individual as an independent contractor. "Willful misclassification" is defined as "avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor." California Labor Code § 226.8(i)(4)

In *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, the California Supreme Court held that the burden of proof is on the hiring entity to establish that a work is an independent contractor who is not entitled to protection within California's IWC wage orders. *Id.* at 957. *Dynamex* further held, in order for the hiring entity to satisfy the burden, it must establish each of the three factors of the ABC test:

"(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and*

(B) that the worker performs work that is outside the usual course of the hiring entity's business; *and*

(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.”

*Id.* at 957.

The *Dynamex* holding was subsequently codified by the California Legislature. *See* California Labor Code § 2750.3.

The Elite Group willfully misclassified Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees by classifying them as independent contractors, in violation of *Dynamex* and California Labor Code §§ 226.8 and 2750.3. The Elite Group will not satisfy its burden with regard to any of the three ABC factors listed above. First, Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were under the direction and control of The Elite Group with regard to the entire working relationship. Among other things, Messrs. Becerra, Beaudoin, Lang, Osko and the other aggrieved employees were required to wear shirts with The Elite Group name for each inspection. Messrs. Becerra, Beaudoin, Lang, Osko and the other aggrieved employees were required to present business cards at their inspections with The Elite Group logo on the card along with contact information for the company. Messrs. Becerra, Beaudoin, Lang, Osko and the other aggrieved employees were mandated to show up to home inspections thirty (30) minutes early and if they did not arrive timely, they would be removed from the schedule or be terminated by the Elite Group. Further, Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved were instructed that if they discussed their payroll worksheet/compensation they could be terminated. Further, The Elite Group told Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees who to perform inspections, how to conduct the inspections, how to sell and upsell services during the inspection and when to conduct certain inspection tests such as for mold. Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were directed to attend training meetings at the office of The Elite Group. Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were threatened with termination or removal from the scheduling calendar if they failed to attend.

The Elite Group also controlled all aspects of compensation. The Elite Group required Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to direct all funds received to the office of The Elite Group on the day received and/or by having Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were required to deposit the funds via their smartphone devices. Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were paid every over Friday by the Elite Group so long as they turned in their inspection reports the evening of the inspection. In addition, Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were threatened with termination or removal from the schedule if they missed deposits and/or failed to turn in their inspection reports on time.

Moreover, The Elite Group implemented a policy prohibiting Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees from discussing issues of compensation. One such policy document provides in pertinent part:

Compensation is a very sensitive issue and should not be discussed with any other employees/contractors/sub-contractors other than the Elite Group management staff. If it is found that the home inspector [sic] discussing/releasing/communicating their compensation in any way, the Elite Group Property Inspection Services will withhold job from the Sub-Contractor unit [sic] further notice. This is cause for immediate termination.

(Emphasis in original).

Second, The Elite Group was and is in the same business as Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees. The Elite Group hired some individuals as employees and many other individuals as independent or "sub" contractors. The individuals hired by The Elite Group as employees performed the same or similar duties as Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees who are and have been misclassified as independent contractors. The business of The Elite Group and that of Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees was and is virtually the same. The Elite Group provides commercial and residential inspection services throughout Southern California, and to the extent Messrs. Becerra, Beaudoin, Lang, Osko and aggrieved employees are considered to be in business, they too provide commercial and residential inspection services, by, *inter alia*, inspecting the interior plumbing and electrical systems, HVAC system, roof, attic, floors, windows and doors, foundation, basement and structural components of a residence or commercial locations and provide reports of their findings.

Third, The Elite Group required Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to form separate corporations prior to receiving work assignments. Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees did not have separate independently established businesses but were required to form corporations in order to receive work assignments, and employment, from The Elite Group. Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were not engaged in independent inspection businesses, nor did they believe they were engaging in such. For example, they did not promote their own businesses or provide services outside of their work for The Elite Group.

#### **I. Meal Period Violations**

Pursuant to California Labor Code § 226.7, 512 and IWC Order No. 4-2001, § 11, no employer in California shall employ any non-exempt employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Non-exempt employees are also

entitled to two (2) meal periods of not less than thirty (30) minutes for a work period longer than ten (10) hours. California employers are required to pay one (1) hour of compensation for each missed or non-compliant meal periods to its non-exempt employees.

The Elite Group regularly did not allow its non-exempt employees, including Messrs. Becerra, Beaudoin, Lang and Osko, to take a full thirty (30) minute meal period, and meal periods were regularly short (less than thirty minutes), late (taken after 5 hours), second meals when employees worked more than ten (10) hours were not provided, and meal periods were interrupted (work was performed during the meal period). Among other things, based upon the misclassification, The Elite Group did not properly inform its non-exempt employees of their rights under California law to take timely, uninterrupted meal periods (including the right to second meal periods during shifts of longer than ten (10) hours), and thus, aggrieved employees like Messrs. Becerra, Beaudoin, Lang and Osko were left in the dark as to when or for how long they could take their meal periods. The Elite Group also failed to post required wage and hour posters at the workplace, did not provide proper training, and did not implement adequate schedules regarding meal periods.

To the extent The Elite Group had a policy regarding the provision of meal periods to its misclassified and non-exempt employees, The Elite Group's policies and procedures were to actively discourage such meal periods. The Elite Group consistently denied Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees compliant meal periods due to their misclassification, and by forcing the aggrieved employees to skip their meal periods, requiring them to take their meal periods after working longer than five (5) hours, failing to provide a second meal period when their shifts were longer than ten (10) hours, requiring them to perform work during their meal periods, and requiring them to return to work after taking less than a thirty (30) minute meal period or work what are and were "on duty" meal periods.

The Elite Group further violated California Labor Code § 226.7 and IWC Wage Order No. 4-2001 by willfully failing to compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees who were not provided with a meal period in compliance with California law with one (1) additional hour of compensation at their regular rates of pay for each workday that a compliant meal period was not provided. The Elite Group further violated California Labor Code § 226.7, 510, 1194, 1197, and IWC Wage Order No. 4-2001 and all other applicable IWC wage orders by failing to compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for all hours worked during their meal periods.

## **II. Rest Period Violations**

The Elite Group failed to authorize, permit and/or compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to take rest periods as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 4-2001, § 12. Employers in California are

required to provide a ten (10) minute rest period for every four hours worked or major fraction thereof. Further, employers in California are required to pay one (1) hour of compensation for each day in which a legally compliant rest period is not provided.

As a result of The Elite Group's misclassification of Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees, Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees did not take rest periods when they were entitled to, because they were not properly informed of their rights to do so under California law. Moreover, Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees were paid commissions based upon the number of inspections they completed and The Elite Group did not compensate the aggrieved employees for rest periods as required by California law. Moreover, as with meal periods, The Elite Group's policy was to actively discourage Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees from taking their rest periods by, among other things, requiring them to work through their rest periods and drive unreasonable amounts of time between jobs which had to be completed such that rest periods simply could not be taken. Further, Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were either too busy or could not stop their work to take their rest periods.

The Elite Group further violated California Labor Code § 226.7 and IWC Wage Order No. 4-2001, § 12 and all other applicable IWC wage orders by failing to pay Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees one (1) additional hour of compensation at their regular rates of pay for each workday that a legally-compliant rest period was not provided.

### **III. Failure to Pay Overtime Wages**

Pursuant to California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3, and all other applicable IWC wage orders, employers in California are required to compensate employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive work day, with double time for all hours worked in excess of eight (8) hours on the seventh day of any workweek, or after twelve (12) hours in any workday.

Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees are entitled to the protections of California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001. The Elite Group failed to compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for all overtime hours worked by misclassifying them as independent contractors which resulted in the non-payment of overtime wages. The Elite Group has also failed to pay overtime at one and one-half (1 ½) or double the regular rate of pay, by among other things, not including commissions, and other forms of compensation in the calculation of overtime which

resulted in the underpayment of their overtime wages; requiring, permitting or suffering Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to work off the clock, including but not limited to, requiring them to training attend meetings at The Elite Group office; requiring, permitting or suffering Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to commute between inspections without receiving overtime wages; requiring, permitting or suffering Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to work through meal and rest periods but not compensating them for this time, and failing to include this time in all hours worked; and other methods to be discovered. The Elite Group has refused to perform their obligations to compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for all overtime wages earned in violation of California Labor Code §§ 510, 1194, 1198, and IWC Wage Order No. 4-2001, § 3.

#### **IV. Failure to Pay Minimum Wages**

Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Order No. 4-2001, § 4, payment to a non-exempt employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

The Elite Group failed to pay Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees minimum wages for all hours worked by, among other things: requiring, permitting or suffering Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to work off the clock, including but not limited to, requiring them to attend unpaid meetings at the office of The Elite Group; requiring, permitting or suffering Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to commute between inspections without receiving minimum wages; requiring, permitting or suffering Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to work through meal and periods and failing to compensate them for this time and failing to include this time in all hours worked. Again, these violations of the California Labor Code generally stem from The Elite Group's misclassification of Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees as independent contractors.

#### **V. Failure to Timely Pay All Wages Earned**

Pursuant to California Labor Code § 204, employers in California must pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code § 204 provides that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. Employers in California using an alternate payday schedule must pay wages within seven calendar days of the end of the payroll period within which the wages were earned.

The Elite Group has failed to pay Messrs. Becerra, Beaudoin, Lang and Osko and aggrieved employees on their regularly scheduled payday for all labor performed during the preceding pay period by, among other things, failing to pay Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees based upon The Elite Group's misclassification of Messrs. Becerra, Beaudoin, Lang and Osko for work they performed off the clock, illegally and inaccurately recording time in which Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees worked, failure to pay Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees for commute time between inspections and requiring them to work through their meal and rest periods without proper compensation.

The Elite Group knew it was required to pay Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees these wages owed and due no later than the payday for the next regular payroll period following the payroll period in which the wages were earned, yet it willfully failed to do so.

**VI. Failure to Pay All Wages Due Upon Discharge or Termination**

Pursuant to California Labor Code § 201, 202, and 203, employers in California are required to pay all earned and unpaid wages to a non-employee who is discharged. California Labor Code § 201 mandates that if an employer discharges a non-exempt employee, that employee's wages accrued and unpaid at the time of discharge are due and payable immediately. Pursuant to California Labor Code § 202, an employer is required to pay all accrued wages due to a non-exempt employee no later than 72 hours after the employee quits his or her employment, unless the employee provides 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the non-exempt employee at the same rate for up to thirty (30) work days.

Because The Elite Group, among other things, misclassified Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees as independent contractors, they were required to work off the clock without compensation, illegally and inaccurately recorded time in which Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees worked, failed to compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for commute time between inspections, and required them to work through their meal and rest periods without compensation, The Elite Group has willfully failed and continue to fail to pay wages due to Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees in accordance with California Labor Code §§ 201 and 202.



**VII. Failure to Maintain Required Records**

The Elite Group has failed to maintain records as required under California Labor Code §§ 226, 1174, and IWC Wage Order No. 4-2001, § 7, including but not limited to, the following records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time records showing when each employee begins and ends each work period; and accurate itemized statements.

The Elite Group failed to maintain records of all hours worked of Messrs. Becerra, Beaudoin, Lang and Osko and the aggrieved employees, including but not limited to, commute time between inspections and attendance at mandatory meetings at the office of The Elite Group. Moreover, The Elite Group knew it was not providing its non-exempt employees with proper meal and rest periods, and knowingly failed to include in the wage statements one (1) extra hour of compensation for each missed meal and rest period. Finally, The Elite Group also required non-exempt employees to work off the clock and intentionally failed to compensate them for this time. Again, these violations of the California Labor Code generally stem from The Elite Group's misclassification of Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees as independent contractors.

**VIII. Failure to Furnish Accurate Itemized Wage Statements**

The Elite Group has failed to provide Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees with timely, accurate, and itemized wage statements in writing accurately showing each employee's gross wages earned, total hours worked, all deductions made, net wages earned, accrued sick leave and all applicable hourly rates in effect during each pay period and the corresponding number of hours worked at each hourly rate, including but not limited to, overtime and double time wages, in violation of California Labor Code § 226 and IWC Wage Order No. 4-2001, § 7.

The Elite Group's wage statements also violate California Labor Code § 226(a) by not providing Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees with proper meal and rest periods and failed to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal or rest period. In addition, The Elite Group required Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to work off the clock without compensation and did not pay Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees the correct amount of their overtime wages, which was not reflected in their wage statements. Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were also not compensated for commuting between inspections. The Elite Group also has not accurately recorded the time worked by Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees resulting in an

inaccurate listing of the number of hours worked at each hourly rate. These unlawful practices have also resulted in inaccurate wage statements to the extent wage statements do not reflect the actual time worked by the aggrieved employees. The wage statements also violate California Labor Code § 226(a)(2) and (a)(3) by failing to list total hours worked by the employee and the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. Instead, the wage statements just list gross pay.

**IX Failure to Provide Employment Records**

California Labor Code §§ 226 and 1198.5 and IWC Wage Order No. 4-2001, § 7 require California employers to provide to copies of their personnel files and certain other employment records upon their request. On May 29, 2020, Messrs. Becerra, Beaudoin, Lang and Osko, through their counsel of record, requested copies of these records from The Elite Group. Authorization forms, expressly permitting the disclosure of these records to counsel, signed by Messrs. Becerra, Beaudoin, Lang and Osko, were submitted to the Elite Group along with the request. Rather than complying with the request, or even producing required documents subject to a qualification that Elite Group was not admitting that Messrs. Becerra, Beaudoin, Lang and Osko are or have been employees, The Elite Group falsely represented that it had no such records. For example, with respect to Mr. Beaudoin, the letter sent from The Elite Group stated: "We are in receipt of your request for employment records for David Beaudoin. Mr. Beaudoin was not an employee of Elite Group Inspection Professionals; therefore, Elite Group has no records or documents in response to your letter." The Elite Group provided identical letters for Messrs. Becerra, Lang and Osko.

**X. Failure to Indemnify Employees for Necessary Employment Expenditures**

California Labor Code § 2802(a) requires California employers to indemnify non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

The Elite Group implemented a policy requiring Messrs. Becerra, Beaudoin, Lang and Osko and the aggrieved employees to be individually responsible for all of their own expenses incurred as a "direct consequence of the discharge" of their duties. The Elite Group's policy provides:

"Inspectors are Sub-Contractors and have individual responsibility for all their own expenses. The inspector is expected to be a motivated self-starter with an entrepreneurial attitude. The inspector is expected to be financially responsible and will need to pay for gas, vehicle maintenance, insurance, tools/equipment and cellular phone. If these items are financially under-managed, then the Inspector will be unable to perform his/her services as agreed upon through this contract."

As a direct result of the misclassification of Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees, The Elite Group has failed to indemnify them based upon its illegal non-reimbursement policy. In particular, The Elite Group has failed to indemnify Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of The Elite Group in violation of California Labor Code § 2802. The Elite Group has failed to properly indemnify Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for gas/mileage and insurance coverage when they drive personal vehicles for work between job assignments. In addition, The Elite Group has failed to compensate Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees for use of their personal cell phones which they used regularly for work purposes.

**XI. Violation of California Labor Code § 232**

California Labor Code § 232 subdivision (a) prohibits an employer from requiring "as a condition of employment, that an employee refrain from disclosing the amount of his or her wages." Next, California Labor Code §232 subdivision (b), prevents an employer from denying an employee "... the right to disclose the amount of his or her wages ..."

The Elite Group implemented a policy preventing Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees from disclosing the amount of their wages with one another. Further, Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees were threatened that if they disclosed their wages to one another or anyone else they would face discipline. Accordingly, The Elite Group's prohibition provides, "If it is found that the home inspector discussing/releasing/communicating their compensation in any way, The Elite Group Property Inspection Services will withhold jobs from Sub-Contractor unit further notice (sic). This is cause for immediate termination" (emphasis in original). The Elite Group required Messrs. Becerra, Beaudoin, Lang and Osko and other aggrieved employees to sign a document confirming the above-referenced policy in violation of California Labor Code § 232.

**XI. Failure to Provide Information Required Under California Labor Code § 2810.5**

California Labor Code § 2810.5 requires California employers to provide non-exempt employees with notice of their rate(s) of pay, designated pay day, the employer's intent to claim allowances (meal or lodging allowances) as part of the minimum wage, and the basis of wage payment (whether paying by hour, shift, day, week, piece, etc.), including any applicable rates for overtime. The law requires that the notice contain the employer's "doing business as" names, and that it be provided at the time of hiring and within 7 days of a change if the change is not listed on the employee's pay stub for the following pay period. The notice must be provided in the language the employer normally uses to communicate employment-related information to the employee, through translated notices provided by the Department of Labor.

The Elite Group has completely disregarded the requirements of California Labor Code § 2810.5 as it failed to provide the wage-theft form to Messrs. Becerra, Beaudoin, Lang and Osko and the other aggrieved employees at any time during their employment.

### **DEMAND**

Demand is hereby made that The Elite Group shall agree, in writing received by this office no later than thirty-three (33) calendar days from the postmark date of this notice, to pay Messrs. Becerra, Beaudoin, Lang and Osko and all other aggrieved employees employed by The Elite Group at any time during the past twelve (12) months, back pay and compensation for the above-referenced violations. Additionally, demand is hereby made that The Elite Group shall agree to comply with all California wage and hour laws as described herein and ensure that its hourly aggrieved employees are paid proper overtime compensation and given required meal and rest periods. In addition, the following demands are hereby made:

1. The Elite Group shall agree to discontinue the use of independent contractors as home inspectors, and all inspectors currently employed and subsequently hired by The Elite Group shall be classified as employees.
2. The Elite Group shall agree to conduct a survey or interview of all aggrieved employees in California during the past twelve (12) months to obtain information from them about the number of meal and rest periods each employee missed during their work shifts, with the investigation to be completed within thirty (30) days.
3. The Elite Group shall agree to pay each aggrieved employee one (1) hour of pay for every shift in which he or she missed or otherwise did not take a compliant meal or rest period, as required by California Labor Code § 226.7 and the applicable wage order.
4. The Elite Group shall agree to pay each aggrieved employee all minimum wages due, as required pursuant to California Labor Code § 1194 and Wage Order No. 4-2001, § 4.
5. The Elite Group shall agree to pay each aggrieved employee all unpaid overtime hours, as required pursuant to California Labor Code §§ 510, 1194, 1198, and Wage Order No. 4-2001, § 3.
6. The Elite Group shall further agree to cure their wage statement violations by providing fully compliant, itemized wage statements to aggrieved employees.

California Labor & Workforce Development Agency  
The Elite Group Property Inspection Service, Inc.  
July 13, 2020  
Page 14 of 14

7. The Elite Group shall agree to reimburse those aggrieved employees who were forced to pay for any business expenses incurred for the benefit of The Elite Group pursuant to California Labor Code § 2802.
8. The Elite Group shall agree to pay a thirty (30) day waiting time penalty, equal to thirty (30) days of pay, to each formerly employed aggrieved employee who reports any unpaid wages as described herein.
9. The Elite Group shall agree to pay all penalties and civil penalties due arising from the violations of the California Labor Code and IWC wage order sections referenced above and pursuant to PAGA, California Labor Code § 2698 *et seq.*

Finally, please find enclosed herein a check in the amount of seventy-five dollars (\$75.00) made payable to the LWDA with regard to the filing fee of this new PAGA claim.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice, via United States Certified Mail to:

Law Office of Scott Ernest Wheeler  
Scott Ernest Wheeler, Esq.  
250 West First Street, Suite 216  
Claremont, California 91711  
Telephone: (909) 621-4988  
Facsimile: (909) 621-4622  
Email: [sew@scottwheelerlawoffice.com](mailto:sew@scottwheelerlawoffice.com)

Thank you for your prompt attention to this matter.

Very Truly Yours,



SCOTT ERNEST WHEELER

SEW/ml