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**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

JESSICA FERRA, individually and on behalf of  
all others similarly situated ,

Plaintiff,

vs.

LOEWS HOLLYWOOD HOTEL, LLC, a  
Delaware corporation; and DOES 1 through 30,

Defendants.

Case No.: BC 586176

[Assigned for all purposes to Hon. Kenneth R.  
Freeman]

**DECLARATION OF DENNIS F. MOSS IN  
SUPPORT OF MOTION FOR PRELIMINARY  
APPROVAL**

Action Filed: June 30, 2015

1 **DECLARATION OF DENNIS F. MOSS**

2 I, Dennis F. Moss, declare:

3 1. I am an attorney licensed to practice law in the State of California, and my firm, Moss  
4 Bollinger, LLP, of which I am a partner, is counsel of record for Plaintiff Jessica Ferra (“Plaintiff”) in  
5 the lawsuit against Loews Hollywood Hotel (“Defendant” or “Loews”) entitled *Ferra et al. v. Loews*  
6 *Hollywood Hotel, LLC* Los Angeles County Superior Court Case No. BC586176. If called to testify, I  
7 could truthfully attest to the matters contained herein.

8 **Identification of Exhibits**

9 2. Attached hereto as **Exhibit A** is a true and correct copy of the Class Action Settlement  
10 (“Settlement Agreement”) executed by the parties. The proposed Class Notice is attached as Exhibit 1  
11 to Exhibit A.

12 3. Attached hereto as **Exhibit B** is a true and correct copy of the estimate from Phoenix  
13 Class Action Administration Solutions for class settlement administration.

14 **Outline of Settlement**

15 4. All of the Parties have reached a proposed settlement agreement. The Settlement  
16 Agreement is attached hereto as Exhibit A. The settlement has a gross value of Seven Hundred Seventy-  
17 Eight Thousand Five Dollars (\$778,005). Under the terms of the Settlement Agreement, the Ferra  
18 Class is defined as “all persons employed by LOEWS who during the Class Period worked for LOEWS  
19 in California and had one or more pay periods with one or more missed break premium payments. Based on  
20 Defendant’s records, the Settlement Class Members consist of approximately 779 current and former  
21 employees. There is also a 203 class comprised of all persons in the Ferra Class whose employment by  
22 LOEWS ended after May 22, 2022.

23 5. There is no claim form required to participate in this Settlement, so all class members will  
24 be paid unless they opt out. There is no reversion to Defendant.

25 **Procedural History of the Case**

26 6. Plaintiff filed a Class Action Complaint on June 30, 2015 against Defendant, alleging that  
27 Defendant failed to properly calculate break premium pay, and improperly rounded work time. In  
28 addition, those claims were a predicate for a Wage Statement Claim, a Labor Code Section 203 claim

1 and a B&P 17200 claim. This case does not have a PAGA component.

2 7. After the filing of a First Amended Complaint in 2015, facilitated by a Stipulation of  
3 Facts, Defendants filed an exhaustive Motion for Summary Adjudication on the "regular rate" break  
4 premium issue, which Plaintiff's opposed. On February 6, 2017, this court granted Defendant's motion.

5 8. In May of 2017, ruling in Defendant's favor on the remaining substantive claim over  
6 "time rounding," Summary Judgment was granted.

7 9. Plaintiff timely appealed. The Court of Appeal decision unanimously upheld this court's  
8 ruling on the rounding issue. On the regular rate issue, the Court of Appeal majority upheld this court's  
9 ruling. Justice Egerton dissented. The Court of Appeal decision can be found at *Ferra v. Loews*  
10 *Hollywood Hotel* (2019) 40 CA5th 1239.

11 10. Plaintiff petitioned for review in the California Supreme Court. The Supreme Court  
12 granted review on the "regular rate" issue and denied review on the "rounding" issue. The Supreme  
13 Court unanimously rejected the Court of Appeal decision on July 15, 2021. The Supreme Court Opinion  
14 can be found at *Ferra v. Loews Hollywood Hotel* (2021) 40 Cal.5th 1239.

15 11. Subsequent to remand, on March 11, 2022, the Parties attended a mediation with  
16 mediator Jeff Krivis. Over the next three months, the Parties continued to discuss and negotiate the  
17 monetary element of the Settlement Agreement which were agreed to on June 14, 2022. Given the  
18 nature of the Settlement, Defendant had to retrieve data for the part of the class period for which data  
19 had not been previously provided. The data was finally produced on August 16, 2022. Given the form of  
20 the data provided, Plaintiff's expert had to convert the data to a format that would make it possible to  
21 apply the Settlement formula.

22 **The Strength of Plaintiff's Case and the Risk of Maintaining Class Action Status Justifies**  
23 **Approval of the Class Settlement.**

24 12. Having prevailed in the Supreme Court on the regular rate issue, it is undeniable that on  
25 that issue, Plaintiff's case is a winner. Class certification of the case on a contested motion was  
26 inevitable given the systematic failure of Defendant to factor non-discretionary payments that should  
27 have been factored into the regular rate for meal break premium calculations. The Settlement reflects the  
28 strength of Plaintiff's case on liability and certification in that there has been no discounting of actual

1 exposure for the unpaid premium amounts, and the settlement shares of the class members reflects  
2 interest owing from the pay date for each pay period when a violation occurred. In fact, the amounts  
3 class members will be receiving may exceed 100% of defendant's exposure plus interest because of the  
4 assumption of paid meal amounts every pay period that a break premium was paid even when pay stubs  
5 did not list such payments.

6 13. Exposure on the Labor Code 203 claim is limited because of the willfulness requirement  
7 for Labor Code 203 exposure. Any separation of employment for a class member prior to May 22, 2022  
8 could not be willful because Loews had a good faith defense to Plaintiff's claim. Court cases at the trial  
9 level in both State and Federal Courts were split on the regular rate issue, and the trial court and Court of  
10 Appeal herein ruled in Defendant's favor. After the *Ferra* decision of the Supreme Court, there  
11 remained a good faith dispute as to an open issue as whether meal break premiums were a *wage* that  
12 triggered Labor Code 203 remedies if not paid in full upon a separation from employment. The only  
13 Court of Appeal position on that issue, *Naranjo v. Spectrum* (2019) 40 CA5th 444 said it was not a  
14 "wage." On May 23, 2022 the Supreme Court reversed the *Naranjo* Court of Appeal decision. *Naranjo*  
15 *v. Spectrum* (2022) 13 Cal. 5th 93. However, there remained defenses to payment including a  
16 settlement had already been reached in principle and the class members' interests were being represented  
17 by Class Counsel.

18 14. Labor Code 226 does not support a basis for relief in this case because prior to the *Ferra*  
19 decision of the Supreme Court, the wage statements conformed with the decision of the Superior Court,  
20 Court of Appeal, and several Trial Court decisions; therefore, Loews has a defense given the knowing  
21 and intentional requirements of 226. Loews complied shortly after the Supreme Court decision, and in  
22 the few weeks between the Supreme Court decision and compliance, all information necessary to  
23 calculate the underpayment of premiums was on the pay stubs.

24 15. Based on their own independent investigation and evaluation, Class Counsel are of the  
25 opinion that the Settlement with Defendant for the consideration and on the terms set forth in the  
26 Settlement Agreement is extraordinary and in the best interest of the Settlement Class in light of all  
27 known facts and circumstances, including the risk of significant delay, based on the possibility of  
28 appellate issues on the issue of fees had the fees aspect of the case, after a successful trial, been the

1 subject of a contested motion. The one hundred cents on the dollar plus interest settlement also avoided  
2 the possibility of Defendant, at trial, or at class certification, asserting and proving that many of the  
3 break premiums it underpaid were not owing because the premiums were paid irrespective of  
4 confirmation of non-compliance with break laws.

5 16. Class Counsel have conducted a thorough investigation into the facts, an extensive review  
6 of relevant documents, and have diligently pursued an investigation of Class Members' claims against  
7 Defendant that were the subject of this action. Class Counsel have conducted a thorough investigation  
8 into the facts and received all relevant payroll information from which exposure was calculated. Based  
9 on their own independent investigation and evaluation, Class Counsel are of the opinion that the  
10 Settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement  
11 is exceptional in light of all known facts and circumstances

12 17. There is no claim form required so all class members will be paid unless they opt out.  
13 There is no reversion to Defendant. There is no government involvement in this case.

14 18. Having prevailed in the Supreme Court on the regular rate issue, it is undeniable that on  
15 that issue, Plaintiff's case is a winner. Class certification of the case on a contested motion was probable  
16 given the systematic failure of Defendant to factor non-discretionary payments that should have been  
17 factored into the regular rate for meal break premium calculations. The Settlement reflects the strength  
18 of Plaintiff's case on liability and certification in that there has been no discounting of actual exposure  
19 for the unpaid premium amounts, and the settlement shares of the class members reflects interest owing  
20 from the pay date for each pay period when a violation occurred.

21 19. The Parties recognize the risks associated with further litigation through trial and appeals.  
22 Had there not been a settlement, Plaintiff would have had to file a motion for class certification, prevail  
23 on that motion, and then try the case, or at a minimum, refute any claims at the damages phase that  
24 some or many of the premiums were not underpaid because some payments of premiums were made  
25 when there had been no violation of break requirements. Furthermore, prolonged litigation and appeals  
26 would have ensued on the fees issue which likely would have produced more appellate work. By  
27 settling defendant avoided the costs associated with additional litigation on a case it lost in the Supreme  
28 Court, including the costs that would inevitably arise in contesting an attorneys' fees motion. By

1 settling, Defendants avoided paying fees associated with further litigation too its counsel, and the  
2 possibility of more fees it would have to pay to Plaintiff's counsel.

3         20. My beliefs about the reasonableness of the settlement, the risks involved in this litigation,  
4 and the things to which I have testified, are, in large part, based on my extensive experience in wage and  
5 hour litigation. I have been an employment/labor lawyer since 1977 and handled numerous cases in all  
6 aspects of employment and labor law, including but not limited to numerous federal and state wage and  
7 hour class action cases, National Labor Relations Board proceedings, wrongful discharge litigation,  
8 discrimination cases, administrative appeals involving wage and hour and other employment issues,  
9 numerous arbitrations, and various other matters involving both traditional labor-law  
10 (union/management law) and employment law issues in the non-union context. My litigation experience  
11 has included over twenty-five arguments in various courts of appeal, including the 9th Circuit, Federal  
12 Circuit, and the First, Second, Third, Fourth and Sixth Appellate Districts of the California Courts of  
13 Appeal. Several of the appellate cases I argued grew out of wage and hour lawsuits. I successfully  
14 briefed and argued a number of cases in the California Supreme Court, including *Ramirez v. Yosemite*  
15 *Water Co.* (1999) 20 Cal.4th 785, a case in which Defendants asserted sales exemptions to overtime;  
16 *Alvarado v. Dart* (2018)4 Cal. 5th 542 (2018), an overtime regular rate case, *Melendez v. San Francisco*  
17 *Baseball Associates* (2019) 7 Cal. 5th 1, a preemption case, and this case, a break premium regular rate  
18 case. More recently, I succeeded in having a unanimous decision in the Court of Appeal reversed by the  
19 California Supreme Court, in a consumer class action case in which the appeal focused on anti-SLAPP  
20 jurisprudence. I have been lead counsel in dozens of class actions and collective actions over the last  
21 several years. These actions have been prosecuted in state as well as in federal court. I have argued and  
22 won several separate contested class certification motions. A writ was taken in one such motion in state  
23 court, and I prevailed in the Court of Appeal (the Appellate Court Opinion was unpublished). I have  
24 written amicus briefs in several employment law cases, including the landmark case of *Sav-on v.*  
25 *Superior Court* (2004) 34 Ca1.4th 319. I have lectured on employment law matters before bar groups at  
26 least 25 times primarily on wage and hour and class action issues. I have been a principal negotiator in  
27 wage and hour class action settlements and PAGA claims that have yielded in excess of Eighty Million  
28 Dollars (\$80,000,000.00). I have directly participated in over sixty mediations of wage and hour class

1 actions. I authored articles published in the Daily Journal on class action waiver agreements and other  
2 issues, most recently on NLRB decisions related to compelled confidentiality agreements. I have been  
3 litigating class and representative actions for over 20 years (including FLSA cases in the 1990's). I have  
4 tried to verdict two wage and hour class actions in Superior Court and tried in an arbitration tribunal a  
5 class claim involving the overcharging of dental premiums to State employees. I have tried individual  
6 wage and hour cases in Superior Court not less than five times. In my career, I have tried at least 10  
7 individual wage and hour claims in arbitration and or Labor Commissioner Proceedings.

8 21. Other appellate matters I have argued or otherwise participated in include, but are not  
9 limited to:

- 10 a. *Sav-on v. Superior Court* (2004) 34 Cal. 4<sup>th</sup> 319 (Amicus brief author)
- 11 b. *Pastoria v. Nationwide* (2003) 112 CA4th 1490 (Major consumer victory)
- 12 c. *Indian Head Water Co. v. Superior Court* 2001 WL 1659525 (Successfully defended a Class  
13 Certification victory)
- 14 d. *Etheridge v. Reins* (2009) 17 CA 4<sup>th</sup> 908 (authored amicus brief in tip pooling case)
- 15 e. *Harris v. Superior Court* (2011) 53 Cal. 4<sup>th</sup> 170 (collaborated w/ co-counsel).
- 16 f. *Pineda v. Bank of America* (2010) 50 Cal.4<sup>th</sup> 1389 (Labor Code Section 203 case. Co-wrote  
17 briefs)
- 18 g. *Avidor v. Sutter's Place* (2013) 212 CA4th 1439 (Briefed and argued tip pooling case)
- 19 h. *Valadez v. California Commerce Club* (2020) 2020 WL 5105078 (PAGA case)
- 20 i. *Johnmohammadi v. Bloomingdale's* (9<sup>th</sup> Cir. 2014) 755 F3d 1072 (FAA/ LMRA preemption  
21 case).
- 22 j. *Grodensky v. Artichoke Joe's* (2009) 171 CA4th 1399 (Tip Pooling and attorneys' fees case)
- 23 k. *Brown v. Ralph's Grocery* (2011) 197 CA 4<sup>th</sup> 489 (Co-wrote amicus brief)
- 24 l. *California Assn of Professional Scientists v. Department of Fish and Game* (2000) 80 CA4th  
25 526
- 26 m. *Professional Engineers in California Government v. State Personnel Board* (2001) 90 CA4th  
27 670
- 28 n. *Campbell v. State Personnel Bd.* (1997) 57 CA4th 281

- 1 o. *Alexander v. State Personnel Board* (2000) 80 CA4th 526
- 2 p. *Professional Engineers in California Government v. Department Of Transportation* (1996) 43
- 3 CA4th 894 Amicus Brief
- 4 q. *Professional Engineers in California Government v. Department Of Transportation* (1997) 15
- 5 Cal 4<sup>th</sup> 453
- 6 r. *Dept. of Personnel Administration v. Superior Court* (1993) 5 CA4th 135
- 7 s. *White v. Davis* (2003) 30 Cal. 4<sup>th</sup> 528
- 8 t. *Young v. Gannon* (2002) 97 CA 4<sup>th</sup> 209
- 9 u. *Duncan v. Dept. of Personnel Admin.* (2000) 77 CA4th 1166
- 10 v. *Board of Admin. v. Wilson* (1997) 52 CA 4<sup>th</sup> 1107
- 11 w. *Tirapelle v. Davis* (1993) 20 CA4th 1317
- 12 x. *Winn v. Opryland Music Group, Inc.* (9<sup>th</sup> Cir. 2001) 22 Fed.Appx. 728
- 13 y. *Pickrell v. General Telephone Co.* (1988) 205 CA 3d 1058 (1988)
- 14 z. *Donahoe v. AMN* Court of Appeal Case No. 29 Cal. App. 5th 1068. 2020 (co- authored
- 15 amicus brief in California Supreme Court).
- 16 aa. *Jacobs v. Rackauckas et al.* (9<sup>th</sup> Cir. (2006) 205 Fed. Appx.498

17 **Consideration of Risk, Expense, Complexity and Likely Duration of Further Litigation**

18 **Weighs in Favor of Approval**

19 22. In addition to the substantial risks and uncertainty inherent in any litigation, the Parties

20 faced the *certainty* that further litigation would be expensive, complex, and time-consuming. The

21 Parties recognize the substantial risks associated with further litigation through trial and appeals of fee

22 issues.

23 **The Amount Offered in Settlement Supports Approval**

24 23. The fact of payments to class members of 100% of their losses plus interest clearly

25 supports approval.

26 24. As explained above, from the Gross Settlement, the class will be receiving 100% of what

27 it is owed under the *Ferra* theory of liability plus all interest through approximately March 12, 2023.

28 The principal amount the class will be receiving is \$69,990. The interest amount total is \$32,970. Per



1 *Naranjo, supra*, interest was calculated at 7% per annum on the amount owing for each pay period.  
2 Additionally, approximately 20 employees will each be receiving a share of an additional \$7,000 on  
3 account of their potential recovery under Labor Code 203.

4 25. There are approximately 779 class members who experienced one or more qualifying pay  
5 periods. The average amount paid will be \$137.17. The smallest amount paid for the exposure period  
6 June 22, 2012 - July 2018 on the regular rate issue is \$0.40. The smallest amount paid for the remainder  
7 of the exposure period through correction by Defendant after the Supreme court decision on the regular  
8 rate issue is \$0.36 (Note: There are a number of employees who worked in both exposure periods. Due  
9 to changes in employee numbers in the two data sets, the number who overlap, and their identities will  
10 not be known until Defendant provides class data to the Administrator.) The highest amount to be paid  
11 to an employee in the earlier data period on the regular rate issue is \$5,487.0, for the later data period.  
12 The highest amount to be paid to an employee in the later data period on the regular rate issue is  
13 \$1,878.41. Given that the largest underpayments of break premiums were to banquet employees who  
14 received substantial shares of service charges charged to Loews banquet clients that were not factored  
15 into their break violation premium pay, over 50% of the payments will be made to just over 10% of the  
16 class.

17 **Exposure/Kullar Analysis**

18 26. The Settlement formula applied here, consistent with regular rate calculation  
19 methodologies looked only at those workweeks in which employees worked and were paid straight  
20 time wages, received break violation premium pay and received additional payments in the form of  
21 includable non-discretionary payments such as monies ascribed to meals provided, shares of service  
22 charges, shift differentials, portorage payments, and uniform allowances. The additional payments were  
23 totaled, divided by the straight time hours worked during the pay period and multiplied times the  
24 number of break premiums paid during the pay period.

25 27. In practice the formula works like this: Assume a Participating Class Member worked  
26 forty straight time hours during a week, received two break premium payments and had \$200 in  
27 banquet service charge payments.  $\$200 \div 40 = \$5.00 \times 2 \text{ Break premiums} = \$10.00$  owing for  
28 the week plus interest at 7% per annum calculated from the pay date of the check for the week. The

1 total of the amount owed to an employee for each qualifying workweek will be combined to establish  
2 his or her "Individual Class Payment." For some covered weeks the unpaid premium amount is quite  
3 small. Suppose an employee worked 40 hours in a week, had on break violation, and had a non-  
4 discretionary payment of \$15 during the week that was not factored in that should have been factored  
5 in.  $\$15.00 \div 40 = \$0.37 \times 1 \text{ violation} = \$0.37$ .

6 28. With class members receiving 100% of their damages plus interest, *Kullar* analysis  
7 compels approval of the Settlement.

8 **The Settlement Is Fair and Reasonable Based Upon Objective Evidence**

9 29. For all of the reasons discussed above, it is my opinion that the Settlement is fair,  
10 reasonable and exceptional. Moreover, the settlement was reached after extensive factual and legal  
11 research, discovery, production of all the relevant data, success in the California Supreme Court, and a  
12 full-day Mediation with Mediator Jeff Krivis.

13 30. My beliefs about the reasonableness of the settlement, the risks involved in this litigation,  
14 and the things to which I have testified, are, in large part, based on my extensive experience in wage  
15 and hour class actions set forth above.

16 **The Extent of Discovery and Procedural Posture of the Case Support Approval**

17 31. Plaintiff's Counsel engaged in more than sufficient formal and informal discovery to  
18 exercise informed judgment in the settlement discussions. Before reaching settlement, through  
19 discovery and investigation, counsel had all relevant policies and the relevant information to investigate  
20 and evaluate the class-wide data provided by Defendant which included payroll information showing  
21 break premiums paid, hours worked, and all non-discretionary payments paid for each employee during  
22 the relevant period. As to one form of non-discretionary payment, the value of meals provided, the pay  
23 records were incomplete; and therefore, class counsel assumed such payments at the average rate even  
24 without proof that such meals were always provided. Furthermore, Plaintiff (through her counsel) had a  
25 complete understanding of how Defendant would attempt to defend the case.  
26  
27  
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1                   **The Settlement Was Achieved at Arms' Length by Experienced Counsel and in**  
2                   **Connection with an Experienced Neutral Mediator**

3                   32. Experienced counsel for Plaintiff and Defendant zealously negotiated on behalf of their  
4 clients' best interests, and the Settlement was reached only after many hours of mediation and after  
5 multiple settlement proposals had been exchanged and rejected. The lengthy and extensive arms-length  
6 settlement negotiations demonstrate the fairness of the Settlement that was reached and demonstrate  
7 that the Settlement is not a product of collusion.

8                   **The Court Should Order Conditional Certification of the Proposed Settlement Class**

9                   33. *The Proposed Settlement Class Is Ascertainable.* The proposed Settlement Class is  
10 ascertainable, as class members have been identified through Defendant's records.

11                  34. *The Proposed Settlement Class Is Sufficiently Numerous.* Defendant's personnel records  
12 show that the proposed Settlement Class has over 700 members.

13                  35. *The Commonality Requirement Is Satisfied for Class Certification for Purposes of*  
14 *Settlement.* The predominance of common issues criteria is a significant issue in connection with  
15 contested motions for class certification because of the implications of trial management when such  
16 issues do not predominate. In a settlement context, that factor is eliminated. Here, all class members  
17 allegedly were subject to common policies or practices regarding calculation of break premium wages.  
18 The main individualized differences between Settlement Class Members relate to damages.

19                  36. *The Typicality Requirement Is Met.* The requisite nexus for typicality exists in this case  
20 between the named Plaintiffs and absent Settlement Class Members, as Plaintiff is asserting the same  
21 claims and seeking the same remedies as the absent Settlement Class Members.

22                  37. *Class-wide Resolution Through Settlement is Superior to Other Methods.* The elements of  
23 the superiority requirement are satisfied for purposes of the settlement because, according to Plaintiff's  
24 allegations and Plaintiff's view of the evidence: (1) the individual interests of each member of the  
25 Settlement Class to control his or her case personally are limited given the claims, defenses and right to  
26 recover at issue; (2) the difficulties in managing this class action are less than the manageability of over  
27 700 individual actions against Defendant for one set of practices; (3) there is no other pending litigation  
28 from the Settlement Class Members relating to facts giving rise to the claims herein; and (4) given that

1 the claims and defenses are identical for each member of the class, one court should be empowered to  
2 have the authority to make rulings applicable to the entire Settlement Class and avoid inconsistent  
3 findings or judgments.

4 **The Court Should Approve the Class Notice.**

5 38. *The Form of Class Notice Satisfies Due Process.* The class notice program here entails  
6 mailing individual notices to each known Settlement Class Member based on addresses in Defendant’s  
7 personnel records. In addition, the Class Notice, Exhibit 1 to Exhibit A hereto explains (1) the nature  
8 of the litigation, (2) the material terms of the Settlement, (3) how members of the Settlement Class may  
9 participate in the Settlement, comment on or object to the Settlement, or elect not to participate in the  
10 Settlement, and (4) whom a member of any Settlement Class should contact for further information.

11 39. Within fifteen (15) calendar days of preliminary approval, Defendant shall provide the  
12 Settlement Administrator with the following information for the Settlement Class Members in the form  
13 of an Excel spreadsheet or similar sortable electronic format: employee I.D. numbers, names, address,  
14 telephone number, and social security number of each Class Member. From information provided to  
15 Class Counsel by Defendant, class counsel will provide the administrator with the totals owing each  
16 class member tied into their ID numbers. Class Counsel and Plaintiff will not be provided identifying or  
17 contact information or social security numbers for any Settlement Class Members in connection with  
18 this Settlement or Settlement Agreement. The data provided to the Settlement Administrator will remain  
19 confidential and will not be disclosed to anyone, except as required to applicable tax authorities,  
20 pursuant to the express written consent of Defendant, or by order of the Court. This data shall be used  
21 only for the purpose of administering this Settlement. (Exhibit A ¶ I(D), VII(2).)

22 40. The Notice of Class Action Settlement and Hearing Date for Court Approval (“Notice of  
23 Settlement”), materially in the form attached to the Settlement Agreement as **Exhibit 1** and as approved  
24 by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by First  
25 Class Mail to those addresses provided, as soon as practicable but in any event within fourteen (14)  
26 calendar days after receipt of their contact information from Defendant. ( Exh. A ¶ 8.4.2. )

27 41. The Notice of Settlement will include the estimated Individual Settlement Payment and  
28 instruct the Settlement Class Member to submit any disputes to the Settlement Administrator within

1 forty-five (45) calendar days from the date the Notice of Settlement was mailed to Settlement Class  
2 Members.

3 42. The Settlement Administrator will attempt to locate any Settlement Class Member whose  
4 Notice of Settlement is returned by the Post Office by performing a National Change of Address  
5 (NCOA) search, and if needed, by conducting one skip trace search regarding any returned Notice of  
6 Settlement. (See Exhibit 8.4.3)

7 **The Parties Properly Selected The Settlement Administrator.**

8 43. The parties agreed to use a professional class action settlement administration firm that  
9 class counsel and defense counsel have previously used for handling the notice process, Phoenix Class  
10 Action Administration Solutions ("Phoenix"). Phoenix is retained for the purpose of administering the  
11 settlement process, including preparing and mailing Class Notice, providing live call agents during  
12 business hours and responding to Settlement Class Member Inquiries. I have settled dozens of class  
13 actions. Based on my experience, the charge of \$12,500 for administration of this settlement is  
14 reasonable quite reasonable. See the Declaration of Phoenix's representative filed simultaneously with  
15 this Motion.

16 **The Enhancement to the Named Plaintiff is Eminently Reasonable In a Context Where**  
17 **Class Members Are Recovering What They Lost Plus Interest**

18 44. The \$15,000 enhancement to the Plaintiff Class representative is warranted in this matter.  
19 She has lived with this case for over seven years, had her deposition taken, and assisted or was kept in  
20 the loop at all critical phases, including preparation of the Complaint, the oppositions and rulings on  
21 Motions, the Appeal process at every level, and at the mediation. Given that the Class members are  
22 receiving full value on their claims, including interest, reducing the enhancement request in this case  
23 does not make sense. The enhancement to the Plaintiff does not diminish the recovery of Class  
24 members.

25 45. I do not believe that I have any conflicts of interest with the Class or with the Class  
26 Representatives. I am not related to any of the Class Representatives. I have not previously represented  
27 Defendant in any matter.  
28



# EXHIBIT 1

## CLASS ACTION SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Jessica Ferra (“Plaintiff”) and defendant Loews Hollywood Hotel, LLC (“Loews”). The Agreement refers to Plaintiff and LOEWS collectively as “Parties,” or individually as “Party.”

### 1. DEFINITIONS.

1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against LOEWS that was the subject of the California Supreme Court Opinion in *Ferra v. Loews Hollywood Hotel* (2021) 11 Cal. 5th 858, captioned *Ferra v Loews, BC586176* initiated on June 30, 2015, that is now pending in the Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Ferra Class” means all persons employed by LOEWS who during the Class Period worked for LOEWS in California and had one or more pay periods with one or more meal break premium payments.

1.5. “Labor Code 203 Subclass” means all persons in the Ferra Class whose employment by LOEWS ended after May 22, 2022.

1.6. “Class Counsel” means Moss Bollinger LLP and Law Offices of Sahag Majarian II.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reasonable attorneys’ fees and expenses, respectively incurred to prosecute the Action.

1.8. “Class Data” means Class Member identifying information in LOEWS’s possession including the Class Member’s name, employee number, last-known mailing address, and Social Security number, earnings data as well as paid break data for each workweek during the class period that the employee had one or more meal break premium payments.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.



1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Ferra Class Period" means the period from June 22, 2012, when LOEWS took over the hotel in 2012, to November 6, 2021, when LOEWS started factoring the non-discretionary wage payments into meal break premium payments.

1.13. "Class Representative" means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Service Payment" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Los Angeles.

1.16. "LOEWS" means named Defendant Loews Hollywood Hotel, LLC.

1.17. "Defense Counsel" means Ballard, Rosenberg, Golper & Savitt LLP.

1.18. "Effective Date" means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. "Final Approval" means the Court's order granting final approval of the Settlement.

1.20. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

1.21. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. "Gross Settlement Amount" means \$778,005, divided between a Class Payment of \$109,856 in payment of Individual Class Payments ("Class Payment"), and \$668,149 in Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses.

1.23. "Individual Class Payment" means the Participating Class Member's pro rata share of the Class Payment calculated as follows:

Each week that a "Class Member" received wages that included base hourly wages, one or more break premium payments and also received one or more other non-discretionary payments other than overtime, double time, sick pay, PTO, vacation pay, gratuities/tips (other than service charges), tax

related payments, bereavement leave pay, advances, pay toward medical benefits, jury duty pay in addition to base wages, (such as a share of banquet service charges, split shift differentials, amount ascribed to meals provided, or performance based bonuses) will be a week of wages that will be used in determining an individual Class Member's "Individual Class Payment." The applicable non-discretionary payments for the week will be divided by the employee's total hours worked for the week including straight time, overtime and double time hours, and the result of that calculation will be multiplied by the number of break premiums paid to the employee in the week. Interest will be applied to the result of that calculation. By way of example:

Assume a Participating Class Member worked forty straight time hours and five overtime hours during a week, received two break premium payments and had \$450 in banquet service charge payments.  $\$450 \text{ divided by } 45 = \$10.00 \times 2 \text{ Break premiums} = \$20.00$  owing for the week plus interest at 7% per annum calculated from the pay date of the check for the week. The total of the amount owed to an employee for each qualifying workweek will be combined to establish his or her "Individual Class Payment" as a *Ferra* Class Member. Each employee who is otherwise eligible for an "Individual Class Payment," whose employment ended during the period May 23, 2022 (the day of the *Naranjo v. Spectrum* California Supreme Court decision and December 31, 2022, will be eligible to receive a share of \$7,000 set aside for waiting time penalties as part of the Labor Code 203 subclass. (e.g., \$350 if the subclass is comprised of 20 people.)

1.24. "Non-Participating Class Member" means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.25. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.26. "Plaintiff" means Jessica Ferra, the named plaintiff in the Action.

1.27. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.28. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval.

1.29. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.

1.30. "Released Parties" means: LOEWS, its parent company and the constituent members of its parent company, and each of its and their respective shareholders, members, affiliates, subsidiaries, owners, partners, joint ventures, former and present officers, directors, employees, agents, representatives, attorneys, insurers, predecessors, successors, and assigns.

1.31. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.32. "Response Deadline" means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall

have an additional 14 calendar days beyond the Response Deadline.

1.33. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.34. “Qualifying Workweek” means any pay period during the Class Period in which a Class Member worked for LOEWS in California and had one or more meal break premium payments and an applicable non-discretionary wage payment in addition to base hourly wages.

## **2. RECITALS.**

2.1 On June 30, 2015, Plaintiff commenced this Action by filing a Complaint alleging causes of action against LOEWS alleging that Defendant failed to properly calculate break premium pay and improperly rounded work time. In addition, those claims were a predicate for a Wage Statement Claim, a Labor Code § 203 claim and a B&P 17200 claim.

2.2 After Plaintiff filed a First Amended Complaint, (“Operative Complaint”), Defendant filed a comprehensive motion for summary adjudication on the “regular rate” break premium issue based on a Stipulation of Facts. On February 6, 2017, the trial court granted Defendant’s motion.

2.3 In May of 2017, Defendant's Motion for Summary Judgment was granted after Defendant moved for Summary Judgment on the remaining issues arising from the rounding claim.

2.4 The Summary Judgment was appealed, the Court of Appeal, over the dissent of one Justice upheld summary judgment on the break premium claim, and unanimously upheld summary judgment on the rounding claim. Plaintiff Petitioned for Review. The California Supreme Court granted review as to the break premium issue, and ultimately unanimously reversed the Majority decision in the Court of Appeal on that issue.

2.5 LOEWS denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.6 On March 11, 2022, the Parties participated in an all-day mediation presided over by Jeff Krivis which led to this Agreement to settle the Action. Between the date of the mediation and June 13, 2022, negotiations continued that ultimately led to the settlement herein.

2.7 Prior to negotiating the Settlement, Plaintiff obtained, through formal and informal discovery, the pay period data necessary to consummate the settlement. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4<sup>th</sup> 116, 129-130 (“*Dunk/Kullar*”).

2.8 Prior to this Settlement the Court has not granted class certification.

2.9 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

### 3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, LOEWS promises to pay \$778,005.00 and no more as the Gross Settlement Amount. LOEWS has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to LOEWS.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Plaintiff of not more than \$15,000.00 (in addition to any Individual Class Payment the Class Representative is entitled to receive as a Participating Class Member). LOEWS will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for the Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will pay the remainder to Participating Class Members in direct proportion to their share of the Individual Settlement Payments. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment and holds LOEWS harmless, and indemnifies LOEWS, from any such responsibility or liability.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than \$612,479 and a Class Counsel Litigation Expenses Payment of not more than \$28,170. LOEWS will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will pay the remainder to Participating Class Members in direct proportion to their share of the Individual Settlement Payments. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds LOEWS harmless, and indemnifies LOEWS, from any such responsibility and liability and from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed

\$12,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$12,500 the Administrator will pay the remainder to Participating Class Members in direct proportion to their share of the Individual Settlement Payments.

3.2.4. To Each Participating Class Member: Their share pursuant to the calculations described in 1.23 above. 75% of each Individual Class Payment shall be allocated to taxable wages ("Wage Portion") and 25% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (LOEWS will separately pay employer payroll taxes it owes on the Wage Portion.) The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms. Each Participating Class Member assumes full responsibility and liability for taxes owed on the Non-Wage Portion of the Individual Class Payment and holds LOEWS harmless, and indemnifies LOEWS, from any such responsibility or liability.

3.3. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

#### **4. SETTLEMENT FUNDING AND PAYMENTS.**

4.1. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, LOEWS will deliver the contact information including names, employee identification numbers, social security numbers and addresses to the Administrator, in the form of a Microsoft Excel spreadsheet. At the same time, Class Counsel will provide the data they previously received that is necessary to the calculation of "Individual Class Payments." To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. LOEWS has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which LOEWS must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.2. Funding of Gross Settlement Amount. LOEWS shall fully fund the Gross Settlement Amount, and also, if required by the Court, fund the amounts necessary to fully pay LOEWS's share of payroll taxes by transmitting the funds to the Administrator no later than [14] days after the Effective Date.

4.3. Payments from the Gross Settlement Amount. Within 14 days after LOEWS funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of

## Individual Class Payments.

- 4.3.1. The Administrator will issue checks for the Individual Class Payments and send them to the Participating Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.3.2. The Administrator must conduct a Class Member Address Search for all other Participating Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Participating Class Member whose original check was lost or misplaced, requested by the Participating Class Member prior to the void date.
- 4.3.3. For any Participating Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 4.3.4. The payment of Individual Class Payments shall not obligate LOEWS to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

[Section 5 intentionally left blank.]

## 6. RELEASES OF CLAIMS.

Effective on the date when LOEWS fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from any and all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint [or ascertained during the Action and released under 6.2, below]. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims

or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [including, e.g., any and all claims involving any alleged failure to factor non-discretionary wage payments into meal and rest break premium pay.] Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

## 7. MOTION FOR PRELIMINARY APPROVAL.

The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

7.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the Notice of Motion, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar*; (ii) a draft proposed Order Granting Preliminary Approval; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, [and/or] the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; and all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient; (vi) a redlined version of the parties' Agreement showing

all modifications made to the Model Agreement ready for filing with the Court; In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

## 8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the Data has been received.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall



prominently estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and the basis of the calculations used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4 The deadlines for Class Members' written objections, challenges to calculations and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 8.4.5 If the Administrator, LOEWS or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

## 8.5 Requests for Exclusion (Opt-Outs).

- 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the

authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.

8.6 Challenges to Calculations. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the calculation of the Class Members' share of the settlement. The Class Member may challenge the calculation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the calculation contained in the Class Notice is correct so long as it is consistent with the Class Data. The Administrator's determination of each Class Member's share shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to Defense Counsel and Class Counsel and the Administrator's determination of the challenge.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

- 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to calculations received and/or resolved, and checks mailed for Individual Class Payments (“Weekly Report”). The Weekly Reports must provide the Administrator’s assessment of the validity of Requests for Exclusion.
- 8.8.4 Calculation Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over calculations. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 10 days after the

Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

**9. CLASS SIZE ESTIMATES.**

Based on LOEWS records, the parties estimate that, as of the date of this Settlement Agreement, there are approximately 779 Class Members.

**10. LOEWS' RIGHT TO WITHDRAW.**

If the Individual Settlement Payments of Class Members who submit valid Requests for Exclusion identified in the Exclusion List exceeds 15% of the total of all Individual Settlement Payments, LOEWS may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if LOEWS withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, LOEWS will remain responsible for paying all Settlement Administration Expenses incurred to that point. LOEWS must notify Class Counsel and the Court of its election to withdraw not later than [seven] days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

**11. MOTION FOR FINAL APPROVAL.**

Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount payable to class members.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

## **12. AMENDED JUDGMENT.**

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

## **13. ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by LOEWS that any of the allegations in the Operative Complaint have merit or that LOEWS has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that LOEWS's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, LOEWS reserves the right to contest certification of any class for any reasons, and LOEWS reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest LOEWS's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, LOEWS and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency.

Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, LOEWS and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and LOEWS, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right

released and discharged by the Party in this Settlement.

13.8 No Tax Advice. Neither Plaintiff, Class Counsel, LOEWS nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by LOEWS in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from LOEWS unless, prior to the Court's discharge of the Administrator's obligation, LOEWS makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Dennis F. Moss, dennis@mossbollinger.com  
Ari E. Moss, ari@mossbollinger.com  
**MOSS BOLLINGER LLP**  
15300 Ventura Blvd., Ste. 207  
Sherman Oaks, California 91403  
(310) 982-2984


To LOEWS:

David J. Fishman, dfishman@brgslaw.com  
**Ballard Rosenberg Golper & Savitt LLP**  
15760 Ventura Blvd. 18th Floor  
Encino, CA 91436  
(818) 508-3707


13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Date: Oct 20, 2022

  
\_\_\_\_\_  
Jessica M Ferra (Oct 20, 2022 16:52 PDT)  
Jessica Ferra

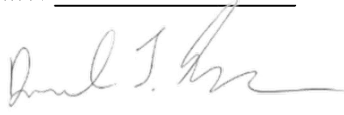
Date: 11/3/2022

DocuSigned by:  
  
\_\_\_\_\_  
6C826131AABB481...  
for Loews Hollywood Hotel, LLC  
Matthew Brenner

Date: November 3, 2022

  
\_\_\_\_\_  
Counsel for Plaintiff Jessica Ferra

Date: 11/3/2022

  
\_\_\_\_\_  
Counsel for Defendant Loews Hollywood Hotel, LLC



**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING  
DATE FOR FINAL COURT APPROVAL**

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*The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

**You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Loews Hollywood Hotel, LLC (“LOEWS”) for alleged wage and hour violations. The Action was filed by former LOEWS employee Jessica Ferra (“Plaintiff”) and seeks payment of allegedly underpaid meal break premium payments for a class of employees (“Class Members”) who worked for LOEWS during all or part of the Class Period June 22, 2012 to November 6, 2021 who meet the criteria for class membership spelled out below.

The proposed Settlement is a Class Settlement requiring LOEWS to fund Individual Class Payments arising from alleged underpayments of meal break premium pay when you received such payments.

During the applicable period you, at times, received extra pay when your time records reflected that you did not take a thirty (30) minute, uninterrupted meal period before the end of your fifth hour of work or before the end of your tenth hour of work during one or more shifts during a pay period. Loews paid you one hour of premium pay at your base hourly rate. The case arose from the contention by Plaintiff that in calculating that one hour of compensation LOEWS should have included in its calculations of one hour of pay, other pay you received during the pay period such as your share of service charges, shift differential pay, and the value of meals provided during the pay period. LOEWS denies the allegations in this case, denies any failure to comply with the law, and denies any and all liability. Loews and Plaintiff have reached a settlement of the case.

Based on LOEWS’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$\_\_\_\_\_ (less withholding on the wage part of your payment)**. The actual amount you may receive may be different depending on a number of factors.

The above estimate is based on LOEWS’s records and factoring into break premium pay the hourly value of non-discretionary wages (such as certain bonuses, incentives and shares of service charges that you received). The calculations examined each pay period in which you received hourly wages, one or more break premiums, and a form of applicable non-discretionary pay. Where questions arose as to whether a payment should have been included in the calculation of your settlement share, it was. The applicable non-discretionary wages for the pay period were divided by the hours you worked during the week, and the result of that calculation was multiplied by the number of break premium payments you already received for the week. For example, suppose you worked banquets one week in which you worked 40 hours at straight time, during the week you received \$400 in service charge payments in addition to your hourly wages, and you received 2 hours of extra base wages as break premium pay based on your time records. For that week your settlement share would be \$400 divided by 40 hours = \$10 x 2 break violations equals \$20, plus interest from the date of the applicable pay period. Another example

involving a smaller extra payment is the following: Suppose that the only extra payment for the week was for meals and totaled \$15.  $\$15 \div 40 \text{ hours} = \$0.375$  x the 2 break premium payments you received that week = \$0.75 plus interest.

For those of you who are otherwise eligible for a payment who left LOEWS' employment after May 23, 2022, your calculation includes an extra payment of approximately \$350 on account of a Labor Code §203 claim that the alleged failure to properly calculate your break premiums properly was allegedly a willful failure to pay wages, and the possibility that had the case been tried, you would have been awarded penalties under that statute. Prior to May 23, 2022 a willfulness finding was not possible under the state of the law. The \$350 amount may be higher or lower depending on how many class members stopped working for LOEWS after May 23, 2022.

If you believe the calculation of your share of the settlement is incorrect you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires LOEWS to make payments under the Settlement and requires Class Members to give up their rights to assert certain claims against LOEWS.

If you worked for LOEWS during the Class Period and received this notice, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment. As a Participating Class Member, though, you will give up your right to assert the settled claims against LOEWS.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue the settled claims against LOEWS.

**LOEWS will not retaliate against you for any actions you take with respect to the proposed Settlement.**

## SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p><b>You Don't Have to Do Anything to Participate in the Settlement</b></p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment. In exchange, you will give up your right to assert the wage claims against LOEWS that are covered by this Settlement (Released Claims).</p>
<p><b>You Can Opt-out of the Class Settlement</b></p> <p><b>The Opt-out Deadline is _____</b></p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p>
<p><b>Participating Class Members Can Object to the Class Settlement</b></p> <p><b>Written Objections Must be Submitted by _____</b></p>	<p>All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.</p>
<p><b>You Can Participate in the [date]Final Approval Hearing</b></p>	<p>The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>
<p><b>You Can Challenge the Calculation of Your Payment</b></p> <p><b>Written Challenges Must be Submitted by _____</b></p>	<p>The amount of your Individual Class Payment depends on the number periods you received both break premium pay and had non-discretionary wage payments other than base hourly wages that were not factored into the break premiums, the number of hours you worked during each such pay period, the amount of non-discretionary pay you received, and the number of break premiums. Your share, according to LOEWS's records, is stated on the first page of this Notice. If you disagree with this number, you must challenge it by [DATE]. See Section 4 of this Notice.</p>

## **1. WHAT IS THE ACTION ABOUT?**

Plaintiff is a former LOEWS employee. The Action alleges that LOEWS violated California labor laws by failing to properly calculate break premium pay during pay periods in which employees were paid such premiums, were paid hourly wages, and also received other non-discretionary wage payments such as bonuses, shift differentials and/or a share of banquet service charges. LOEWS paid one hour of base hourly wages into the break premiums without factoring in payments that employees received during the workweek that Plaintiff claims should have been included in calculating the one hour of pay such as shares of service charges, bonuses, shift differentials and the value of meals provided. LOEWS denies Plaintiff's allegations, denies any failure to comply with California labor laws, and denies any and all liability.

## **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

The parties hired an experienced neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and LOEWS have negotiated a proposed Settlement that is subject to the Court's Final Approval. By agreeing to settle, LOEWS does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that the Settlement provides you and other Class Members with at least the full amount of the alleged underpayment of break premiums with interest; and the (2) Settlement is in the best interests of the Class Members. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

## **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

LOEWS will pay \$778,005 as the Gross Settlement Amount which it has agreed to deposit into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, and the Administrator's expenses. Assuming the Court grants Final Approval, LOEWS will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

1. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to \$619,253 to Class Counsel for attorneys' fees and up to \$28,170 for their

litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment. The basis of the fee award is the hours class Counsel devoted to litigating this case through an ultimate decision by the California Supreme Court, and a multiplier of their applicable hourly rates based on the fact that they took the case on a contingency basis, and the skill involved in prevailing.

- B. Up to \$15,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment.
- C. Up to \$12,500 to the Administrator for services administering the Settlement.

Participating Class Members have the right to object to any of these deductions. The Court will consider all timely objections.

- 2. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on the formula described above.
- 3. Taxes Owed on Payments to Class Members. Plaintiff and LOEWS are asking the Court to approve an allocation of 75% of each Individual Class Payment to taxable wages ("Wage Portion") and 25% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. (LOEWS will separately pay employer payroll taxes it owes on the Wage Portion.) The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and LOEWS have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 4. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies

will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the money represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

5. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [Date Inserted by administrator], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the [DATE] Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against LOEWS.
6. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and LOEWS have agreed that, in either case, the Settlement will be void: LOEWS will not pay any money and Class Members will not release any claims against LOEWS.
7. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Calculations, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement.

The Administrator's contact information is contained in Section 9 of this Notice.

8. Participating Class Members' Release. After the Judgment is final and LOEWS has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against LOEWS or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were

alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., any and all claims involving a failure to properly calculate break violation premium pay. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

#### **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

1. Individual Class Payments. Individual Class Payments were determined by first identifying from the earnings data provided by LOEWS each week in which you received one or more meal break premiums during the class period. In review of that data, Class Counsel ascertained what if any non-discretionary payments you received during each of those weeks that allegedly should have been included in the calculation of break premiums. Payments such as your share of service charges, shift differential payments, bonuses, other incentives, and the value of meals that appeared on your checks were factored into the premium payments you are owed under this Settlement. When certain payments you received may or may not have been attributable to a payment that should have been included in the payment, Plaintiff's counsel erred for inclusion. Dollar amounts paid for things such as overtime, double time, contributions to benefit plans or for paid leave were not factored into the calculation as consistent with what is not to be factored into "one hour of compensation" at the "regular rate of pay" owed for break premiums. The total of the amounts paid in included categories during the week, are divided by the hours worked during the week, and that per hour amount is multiplied by the number of break premiums you received during the week. Interest on that total is then calculated at 7% per annum to establish your recovery for the week. The total for all weeks constitutes your individual share.

Due to a California Supreme Court decision in another area of the law rendered on May 23, 2022, that may impact the rights of Class Members otherwise eligible for payments who left Loews employ on or after that date, each of those employees will receive an additional payment estimated at \$350.

2. Calculation Challenges. You have until [DATE] to challenge the calculation of your share of the Settlement. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will assume the calculation of your share is accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve challenges based on your submission and on input from Class Counsel and LOEWS's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

## 5. HOW WILL I GET PAID?

Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out).

**Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Ferra v. Loews Hollywood Hotel*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by \_\_\_\_\_, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## 7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and LOEWS are asking the Court to approve. At least \_\_\_\_\_ days before the \_\_\_\_\_ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website \_\_\_\_\_ or the Court's website \_\_\_\_\_.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is \_\_\_\_\_.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Ferra v. Loews Hollywood Hotel* Case No. BC586176 and include your name, current address, telephone number, and approximate dates of employment for LOEWS and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be



ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

### **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You can, but don't have to, attend the Final Approval Hearing on \_\_\_\_\_ at \_\_\_\_\_ in Department 7 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website \_\_\_\_\_ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

### **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything LOEWS and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to Phoenix Class Action Administration Solutions' website at \_\_\_\_\_. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. BC586176. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

### **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.**

Class Counsel:

Name of Attorney: Dennis F. Moss

Email Address: [dennis@mossbollinger.com](mailto:dennis@mossbollinger.com)

Name of Firm: Moss Bollinger LLP

Mailing Address: 15300 Ventura Blvd., Suite 207, Sherman Oaks, CA 91403

Telephone: 310-982-2984

Settlement Administrator:

Name of Company: [TBD]

Email Address:

Mailing Address:

Telephone:

Fax Number:

#### **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

#### **11. WHAT IF I CHANGE MY ADDRESS?**

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

# EXHIBIT 2



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## CASE ASSUMPTIONS

Class Members	760
Opt Out Rate	1%
Opt Outs Received	8
Total Class Claimants	752
Subtotal Admin Only	\$12,250.00

**Not-to-Exceed Total \$12,250.00**

**For 790 Members**

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

**October 10, 2022**

## Case: Ferra v. Loews Hollywood Hotel Opt-Out wTranslation

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Dennis Moss

Firm: Moss Bollinger, LLP.

Contact Number: 310.982.2984

Email: dennis@dennismosslaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on 790 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

### Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$160.74	1	\$160.74
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$150.00	1	\$150.00
<b>Total</b>			<b>\$742.74</b>

\* Up to 120 days after disbursement

### Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$105.00	3	\$315.00
Data Merge & Duplication Scrub	\$0.25	760	\$190.00
Notice Packet & Opt-Out Form	\$1.25	760	\$950.00
Estimated Postage (up to 2 oz.)*	\$0.84	760	\$638.40
Static Website	\$225.00	1	\$225.00
Language Translation	\$1,000.00	1	\$1,000.00
<b>Total</b>			<b>\$3,318.40</b>

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

<b>Skip Tracing &amp; Remailing Notice Packets / Tracking &amp; Programming Undeliverables</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$1.75	152	\$266.00
Remail Notice Packets	\$1.25	152	\$190.00
Estimated Postage	\$0.84	152	\$127.68
Programming Undeliverables	\$50.00	2	\$100.00
		<b>Total</b>	<b>\$848.68</b>

<b>Database Programming / Processing Opt-Outs, Deficiencies or Disputes</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	4	\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	3	\$30.00
Case Manager	\$85.00	2	\$170.00
		<b>Total</b>	<b>\$890.00</b>

<b>Calculation &amp; Disbursement Programming/ Create &amp; Manage QSF/ Mail Checks</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Programming Calculations	\$135.00	3	\$405.00
Disbursement Review	\$135.00	3	\$405.00
Programming Manager	\$95.00	3	\$285.00
QSF Bank Account & EIN	\$125.00	2	\$250.00
Check Run Setup & Printing	\$125.00	4	\$500.00
Mail Class Checks *	\$1.25	752	\$940.50
Estimated Postage	\$0.61	752	\$458.96
		<b>Total</b>	<b>\$3,244.46</b>

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

<b>Tax Reporting &amp; Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations</b>			
<b>Project Action:</b>	<b>Rate</b>	<b>Hours/Units</b>	<b>Line Item Estimate</b>
Case Supervisor	\$100.00	4	\$400.00
Remail Undeliverable Checks (Postage Included)	\$1.50	150	\$225.72
Case Associate	\$50.00	4	\$200.00
Reconcile Uncashed Checks	\$70.00	3	\$210.00
Conclusion Reports	\$125.00	2	\$250.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,200.00	1	\$1,200.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office Estimated 60 Total Class Members	\$300.00	1	\$300.00
		<b>Total</b>	<b>\$3,205.72</b>

\* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

**Estimate Total: \$12,250.00**



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## **TERMS AND CONDITIONS**

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### **Tax Reporting Requirements**

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.