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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

RONALD ACKER, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

RITCHIE BROS AUCTIONEERS AMERICA INC., an unknown business entity; RITCHIE BROS AUCTION, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: VCU283076

Honorable David Mathias
Department 1

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

Complaint Filed: June 4, 2020
Trial Date: None Set

1 California; and (6) any other information required by the Settlement Administrator in order to
2 effectuate the terms of the Settlement.

3 6. "Settlement Class" or "Settlement Class Members" means all current or former
4 hourly-paid or non-exempt employees who are or were employed by Defendants in the State of
5 California from June 4, 2016 until February 2, 2021.

6 7. "Class Period" means the period from June 4, 2016 until April 3, 2021.

7 8. "Class Representative" means Plaintiff Ronald Acker in his capacity as a
8 representative of the Participating Class Members.

9 9. "Class Representative Incentive Payment" means the amount that the Court
10 authorizes to be paid to Plaintiff Acker, in addition to his Individual Settlement Payment, in
11 recognition of the efforts and risks he has taken in assisting with the prosecution of the Action
12 and in exchange for the General Release of his claims as provided herein.

13 10. "Court" means the Superior Court of the State of California for the County of
14 Tulare.

15 11. "Defendants" means Ritchie Bros. Auctioneers America Inc. and Ritchie Bros.
16 Auction.

17 12. "Effective Date" means the date upon which both of the following have
18 occurred: (i) final approval of the Settlement is granted by the Court, and (ii) the Court's order
19 approving the Settlement becomes Final. "Final" shall mean the latest of: (i) if there is an appeal
20 of the Court's order, the date the order is affirmed on appeal, the date of dismissal of such
21 appeal, or the expiration of the time to file a petition for writ of certiorari to the United States
22 Supreme Court, or, (ii) if an objection to the settlement is filed by any Settlement Class
23 Member, then the expiration date of the time for filing or noticing any appeal of the order,
24 which is sixty (60) calendar days from entry of the order; or (iii) if no objection has been filed
25 by any Settlement Class Member, then the date that the Court grants final approval of this
26 Settlement.

27 13. "Final Approval" means the Court entering an order granting final approval of
28 the Settlement Agreement.

1 14. “Maximum Settlement Amount” means the sum of Nine Hundred Eighty
2 Thousand Dollars (\$980,000.00). The Maximum Settlement Amount is non-reversionary; no
3 portion of the Maximum Settlement Amount will return to Defendants.

4 15. “Individual Settlement Payment” means the amount payable from the Net
5 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
6 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement
7 Payments shall be paid by a settlement check made payable to Participating Class Members
8 and/or PAGA Members.

9 16. “Net Settlement Amount” means the funds available for payments to the
10 Settlement Class, which shall be the amount remaining after the following amounts are
11 deducted from the Maximum Settlement Amount: (1) Class Counsel’s fees, (2) Class Counsel’s
12 costs, (3) Settlement Administration Costs, (4) Class Representative Incentive Payment to
13 Plaintiff, and (5) PAGA Payment to the California Labor and Workforce Development Agency
14 (“LWDA”).

15 17. “Class Notice” means the Notice of Proposed Class Action Settlement in a form
16 substantially similar to the form attached hereto as Exhibit A, in both English and Spanish, that
17 will be mailed to Settlement Class Members’ last known addresses and which will provide
18 Settlement Class Members with information regarding the Action and information regarding the
19 settlement of the Action.

20 18. “PAGA” means the California Labor Code Private Attorneys General Act of
21 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

22 19. “PAGA Payment” means the amount that the Parties have agreed to allocate as
23 civil penalties in order to settle claims arising under the Private Attorneys General Act of 2004
24 (Cal. Lab. Code §§ 2698, *et seq.*). The Parties have agreed to allocate Seventy-Five Thousand
25 Dollars (\$75,000.00) of the Maximum Settlement Amount as the PAGA Payment. Seventy-five
26 percent (75%) of the PAGA Payment (i.e., \$56,250.00) shall be paid directly to the LWDA in
27 accordance with Labor Code §§ 2698 *et seq.* The remaining twenty-five percent (25%) of the
28 PAGA Payment (i.e., \$18,750.00), shall be distributed to PAGA Members. PAGA Members

1 will receive payment from the employee portion of the PAGA Payment regardless of their
2 decision to participate in the class action if the PAGA Payment is approved by the Court.

3 20. "PAGA Period" means the period from April 3, 2020 until April 3, 2021.

4 21. "PAGA Members" means all current or former hourly-paid or non-exempt
5 employees who were employed by Defendants in the State of California at any time during the
6 PAGA Period.

7 22. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean
8 either Plaintiff or Defendants.

9 23. "Participating Class Members" means all Settlement Class Members who do not
10 submit a valid and timely Request for Exclusion.

11 24. "Plaintiff" means Ronald Acker.

12 25. "Preliminary Approval" means the Court order granting preliminary approval of
13 the Settlement Agreement.

14 26. "Objection" means a Settlement Class Member's valid, signed and timely written
15 objection to the Settlement Agreement. For an Objection to be valid, it must include: (a) the
16 objector's full name, address, telephone number, last four digits of the Settlement Class
17 Member's social security number or employee ID number and (b) a written statement of all
18 grounds for the objection accompanied by legal support, if any, for such objection.

19 27. "Settled Claims" means any and all claims that are alleged, or reasonably could
20 have been alleged based on the facts and claims asserted in the operative complaint in the
21 Action including the following claims: (i) unpaid wages, failure to pay minimum wage, failure
22 to pay overtime, and any other claim for failure to pay wages under the Labor Code or Wage
23 Order, and any claim for failure to pay wages or overtime wages at the correct regular rate of
24 pay, including claims under Labor Code §§ 510, 1198, 1194, 1197, and 1197.1; (ii) failure to
25 provide meal period premiums or failure to provide meal periods under the Labor Code or
26 Wage Order; (iii) failure to pay rest period premiums or failure to authorize and permit rest
27 periods under the Labor Code or Wage Order; (iv) failure to timely pay wages and/or waiting
28 time penalties pursuant to Labor Code §§ 201 to 203; (v) failure to timely pay wages during

1 employment and/or waiting time penalties pursuant to Labor Code § 204; (vi) failure to issue or
2 provide adequate wage statements, whether for any penalty or wage; pursuant to Labor Code §
3 226; (vii) failure to maintain records under the Labor Code or Wage Order, including under
4 Labor Code § 1174; (viii) penalties under the California Private Attorneys General Act based on
5 the aforementioned Labor Code violations; (ix) unreimbursed business expenses under Labor
6 Code §§ 2800 and 2802; (x) unfair business practices under Business and Professions Code §
7 17200 based on the aforementioned alleged Labor Code violations; and (xi) any other claims
8 arising, or which could have arisen, from the operative facts alleged in Plaintiff's Complaint
9 filed on June 4, 2020.

10 28. "Released Parties" means Defendants Ritchie Bros. Auctioneers America Inc.
11 and Ritchie Bros. Auction as named by Plaintiff in the operative complaint, and their past,
12 present and/or future, direct and/or indirect, officers, directors, members, managers, employees,
13 agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators,
14 parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint
15 venturers.

16 29. "Request for Exclusion" means a valid and timely written statement submitted
17 and signed by a Settlement Class Member requesting to be excluded from Settlement Class. To
18 be effective, the Request for Exclusion must contain (a) the Class Member's name, address,
19 telephone number, and the last four digits of the Class Member's Social Security number and/or
20 the Employee ID number and (b) a clear statement requesting to be excluded from the
21 settlement of the class claims similar to the following: "I wish to exclude myself from the class
22 settlement reached in the matter of *Acker v. Ritchie Bros Auctioneers America Inc. et al.* I
23 understand that by excluding myself, I will not receive money from the settlement of my
24 individual claims." To be effective, the Request for Exclusion must be post-marked by the
25 Response Deadline and received by the Settlement Administrator. The Parties agree, however,
26 there is no statutory right for PAGA Members to opt out or otherwise exclude himself or herself
27 as PAGA Members or he PAGA portion of the settlement.

1 30. “Response Deadline” means the date thirty-five (35) days after the Settlement
2 Administrator mails the Class Notice to Settlement Class Members and the last date on which
3 Settlement Class Members may submit Requests for Exclusion, written objections to the
4 Settlement, or workweek disputes. In the event the 35th day falls on a Sunday or Federal
5 holiday, the Response Deadline will be extended to the next day on which the U.S. Postal
6 Service is open. The Response Deadline for Requests for Exclusion or Objections will be
7 extended ten (10) calendar days for any Settlement Class Member who is re-mailed a Class
8 Notice by the Settlement Administrator, unless the 10th day falls on a Sunday or Federal
9 holiday, in which case the Response Deadline will be extended to the next day on which the
10 U.S. Postal Service is open. The Response Deadline may also be extended by express
11 agreement between Class Counsel and Defendants. Under no circumstances, however, will the
12 Settlement Administrator have the authority to unilaterally extend the deadline for Class
13 Members to submit a Request for Exclusion or objection to the settlement.

14 31. “Settlement” means the disposition of the Action pursuant to this Agreement.

15 32. “Settlement Administrator” means Phoenix Settlement Administrators. The
16 Parties represent that they do not have any financial interest in the Settlement Administrator or
17 otherwise have a relationship with the Settlement Administrator that could create a conflict of
18 interest.

19 33. “Settlement Administration Costs” means the costs payable from the Maximum
20 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
21 but not limited to, printing, distributing, and tracking documents for this Settlement,
22 calculating/confirming the Settlement Class Members’ Workweeks from the information
23 contained in the Class List, calculating each Participating Class Member’s Individual Settlement
24 Payment, tax reporting, distributing the Maximum Settlement Amount, providing necessary
25 reports and declarations, and other duties and responsibilities set forth herein to process this
26 Settlement, and as requested by the Parties or the Court. Settlement Administration Costs shall
27 not exceed Ten Thousand Dollars (\$10,000.00).

1 information necessary for the Settlement Administrator to calculate necessary payroll taxes
2 including their official names, 8 digit state unemployment insurance tax ID numbers, and other
3 information requested by the Settlement Administrator, no later than fourteen (14) business
4 days after the Effective Date.

5 38. Distribution of the Maximum Settlement Amount. Within fourteen (14) calendar
6 days of the funding of the Settlement, the Settlement Administrator will issue payments for: (a)
7 Individual Settlement Payments; (b) the PAGA Payment to the LWDA; (c) the Class
8 Representative Incentive Payment; (d) Class Counsel's Fees and Costs and (e) Settlement
9 Administration Costs.

10 39. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any
11 application or motion by Class Counsel for attorneys' fees of up to thirty-five percent (35%) of
12 the Maximum Settlement Amount (\$343,000.00) plus the reimbursement of costs and expenses
13 associated with Class Counsel's litigation and settlement of the Action, in an amount not to
14 exceed Twenty Thousand Dollars (\$20,000.00), both of which will be paid from the Maximum
15 Settlement Amount. Any portion of the requested fees or costs that is not awarded by the Court
16 to Class Counsel shall become part of the Net Settlement Amount and distributed to
17 Participating Class Members as provided in this Agreement.

18 40. Class Representative Incentive Payment. Defendants agree not to oppose or
19 object to any application or motion by Plaintiff for a Class Representative Incentive Payment of
20 Seven Thousand Five Hundred Dollars (\$7,500.00). The Class Representative Incentive
21 Payment is in exchange for the General Release of the Plaintiff's individual claims, and for
22 Plaintiff's time, effort and risk in bringing and prosecuting the Action. Any adjustments made
23 by the Court to the requested Class Representative Incentive Payment shall not be deemed a
24 material modification of this Agreement. In the event that the Court reduces or does not
25 approve the requested Class Representative Incentive Payment, the Settlement Agreement
26 remains in full force and effect, Plaintiff shall not have the right to revoke the settlement for that
27 reason, it shall remain binding, and any portion of the requested Class Representative Incentive
28

1 Payment that is not awarded to the Class Representative shall become part of the Net Settlement
2 Amount and distributed to Participating Class Members as provided in this Agreement.

3 41. Settlement Administration Costs. The Settlement Administrator will be paid for
4 the reasonable costs of administration of the Settlement and distribution of payments from the
5 Maximum Settlement Amount as further set forth in this Agreement. Settlement Administration
6 Costs shall not exceed Ten Thousand Dollars (\$10,000.00).

7 42. PAGA Payment. Seventy-Five Thousand Dollars (\$75,000.00) of the Maximum
8 Settlement Amount shall be allocated from the Maximum Settlement Amount for settlement of
9 claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five
10 percent (75%) of the PAGA Payment, or Fifty-Six Thousand Two Hundred Fifty Dollars
11 (\$56,250.00), to the LWDA. The remaining twenty-five percent (25%) of the PAGA Payment,
12 or Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00), will be distributed to PAGA
13 Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA
14 Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA
15 Payment regardless of their decision to opt-out of the class settlement.

16 43. Net Settlement Amount for Payment of Class Claims. The Net Settlement
17 Amount will be used to satisfy the class portion of Participating Class Members' Individual
18 Settlement Payments in accordance with the terms of this Agreement. The estimated Net
19 Settlement Amount is as follows:

20	Maximum Settlement Amount	\$	980,000.00
21	Class Representative Incentive Payment:	\$	7,500.00
22	Class Counsel's Fees:	\$	343,000.00
23	Class Counsel's Costs:	\$	20,000.00
24	PAGA Payment:	\$	75,000.00
25	Settlement Administration Costs:	\$	10,000.00
26	Estimated Net Settlement Amount:	\$	524,500.00

1 44. Individual Settlement Payment Calculations. Individual Settlement Payments
2 will be paid from the Net Settlement Amount and the 25% portion of the PAGA Payment for
3 PAGA Members and shall be paid pursuant to the formulas set forth herein:

4 a) Calculation of Class Portion of Individual Settlement Payments.

5 The Settlement Administrator will calculate the total Workweeks for all Participating Class
6 Members by adding the number of workweeks worked by each Participating Class Member
7 during the Class Period. The amount that each Participating Class Member will be eligible to
8 receive will be calculated by dividing each Participating Class Member's individual Workweeks
9 by the total Workweeks of all Participating Class Members, and multiplying the resulting
10 fraction by the Net Settlement Amount.

11 b) Calculation of PAGA Portion of Individual Settlement Payments.

12 The Settlement Administrator will calculate the total Workweeks for all PAGA Members by
13 adding the number of workweeks worked by each PAGA Member during the PAGA Period.
14 The amount that each PAGA Member will receive will be calculated by dividing each
15 participating PAGA Member's individual Workweeks by the total Workweeks of all PAGA
16 Members, and multiplying the resulting fraction by the 25% share of the PAGA Payment
17 designated for distribution to aggrieved employees. PAGA Members shall receive this portion
18 of their Individual Settlement Payment regardless of whether they opt out of the participation
19 regarding the class claims.

20 c) Allocation of Individual Settlement Payments. All Individual

21 Settlement Payments will be allocated as follows: thirty-three and one-third percent (33 1/3%)
22 of each Individual Settlement Payment will be allocated as wages, sixty-six and two-thirds
23 percent (66 2/3%) shall be allocated as penalties and interest. The portion of the Individual
24 Settlement Payment allocated to wages will be reported by the Settlement Administrator on an
25 IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by
26 the Settlement Administrator.
27
28

1 45. Notice to LWDA of Settlement. Prior to, their Motion for Preliminary Approval,
2 Class Counsel will submit the proposed Settlement to the LWDA, in accordance with Labor
3 Code section 2699, subdivision (1)(2).

4 46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
5 Participating Class Members under this Settlement, as well as any other payments made
6 pursuant to this Settlement, will not be utilized to calculate any additional benefits under any
7 benefit plans to which any Class Members may be eligible, including, but not limited to profit-
8 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
9 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
10 Agreement will not affect any rights, contributions, or amounts to which any Class Members
11 may be entitled under any benefit plans.

12 47. Settlement Administration Process. The Parties agree to cooperate in the
13 administration of the Settlement and to make all reasonable efforts to control and minimize the
14 costs and expenses incurred in administration of the Settlement. The Settlement Administrator
15 will provide the following services:
16

- 17 a. Establish and maintain a Qualified Settlement Fund.
- 18 b. Calculate the Individual Settlement Payment each Participating Class Member is
19 eligible to receive and the portion of the PAGA Payment each PAGA Member shall
20 receive.
- 21 c. Translate the Class Notice from English to Spanish.
- 22 d. Print and mail the Class Notice in English and Spanish.
- 23 e. Perform address searches as detailed in Paragraph 48, including conduct additional
24 address searches and skip traces for mailed Class Notices that are returned as
25 undeliverable.
- 26 f. Process Requests for Exclusion, Objections, calculate Participating Class Members'
27 Individual Settlement Payment, field inquiries or disputes from Settlement Class
28 Members. This service will include Settlement Individual Payment calculations,

1 printing and issuance of Settlement Payment Checks, and preparation of any
2 necessary IRS W2 and 1099 Tax Forms and any other filings required by any
3 governmental taxing authority. Basic accounting for and payment of employee tax
4 withholdings will also be included as part of this service.

- 5 g. Inform Defendants of their employer-side payroll tax liability and making all
6 necessary deposits, payments to the necessary taxing authorities for the payments
7 received for employer-share of payroll taxes.
- 8 h. Supply Plaintiff's Counsel with a draft declaration at the conclusion of the opt-out
9 period.
- 10 i. Provide declarations and/or other information to this Court as requested by the
11 Parties and/or the Court.
- 12 j. Provide weekly status reports to counsel for the Parties.
- 13 k. Posting a notice of final judgment, after entry of the judgment, online at the
14 Settlement Administrator's website for a period of sixty (60) days pursuant to
15 California Rule of Court 3.769.

16 48. Delivery of the Class List. Within fifteen (15) calendar days of Preliminary
17 Approval, Defendants will provide the Class List to the Settlement Administrator. This is a
18 material term of the Agreement, and if Defendants fail to comply, Plaintiff shall have the right
19 to void the Agreement.

20 49. Class Notice by First-Class U.S. Mail. Within fifteen (15) calendar days after
21 receiving the Class List from Defendants, the Settlement Administrator will mail the Class
22 Notice to all Settlement Class Members via regular First-Class U.S. Mail, using the most current,
23 known mailing addresses identified in the Class List.

24 50. Confirmation of Contact Information in the Class List. Prior to mailing, the
25 Settlement Administrator will perform a search based on the National Change of Address
26 Database for information to update and correct for any known or identifiable address changes.
27 Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the
28 Response Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding

1 address affixed thereto and the Settlement Administrator will indicate the date of such re-
2 mailing on the Class Notice. If no forwarding address is provided, the Settlement Administrator
3 will promptly attempt to determine the correct address using a skip-trace, or other search using
4 the name, address and/or Social Security number of the Settlement Class Member involved, and
5 will then perform a single re-mailing. If any Class Notice sent to a Settlement Class Member by
6 the Settlement Administrator is returned as undeliverable to a current employee, then
7 Defendants shall make all reasonable efforts to obtain the current address from the Settlement
8 Class Member and provide the same within seven (7) calendar days of notice from the
9 Settlement Administrator. Those Settlement Class Members who receive a re-mailed Class
10 Notice, whether by skip-trace or by request, will have between the later of (a) an additional ten
11 (10) calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an
12 Objection to the Settlement.

13 51. Class Notice. All Settlement Class Members will be mailed a Class Notice. Each
14 Class Notice will provide: (a) information regarding the nature of the Action; (b) a summary of
15 the Settlement's principal terms; (c) the Settlement Class definition; (d) the total number of
16 Workweeks each respective Settlement Class Member worked for Defendants during the Class
17 Period; (e) each Settlement Class Member's estimated Individual Settlement Payment and the
18 formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class
19 Period and PAGA Period; (g) the deadlines by which the Settlement Class Member must
20 postmark Requests for Exclusion, Objections to the Settlement, or workweek disputes; (h) the
21 claims to be released, as set forth herein; and (j) the date for the final approval hearing.

22 52. Disputed Information on Class Notice. Settlement Class Members will have an
23 opportunity to dispute the information provided in their Class Notice. To the extent Settlement
24 Class Members dispute the number of Workweeks with which they have been credited or the
25 amount of their Individual Settlement Payment, Settlement Class Members may produce
26 evidence to the Settlement Administrator showing that such information is inaccurate. Absent
27 evidence rebutting Defendants' records, Defendants' records will be presumed determinative.
28 However, if a Settlement Class Member produces evidence contrary to Defendants' records by

1 the Response Deadline, the Settlement Administrator shall notify Class Counsel, and
2 Defendants' counsel to discuss and resolve the dispute, including providing all available
3 relevant information to all counsel. The Parties will resolve all disputes jointly, which shall be
4 final and binding on any Settlement Class Member disputes, and shall thereafter instruct the
5 Settlement Administrator how to proceed in processing the dispute. If the Parties cannot reach
6 an agreement, disputes shall be referred to the Settlement Administrator for a determination and
7 if the dispute remains unresolved after that, the dispute shall be submitted to the Court for final
8 determination. All such disputes are to be resolved or submitted to the Court no later than
9 fourteen (14) calendar days after the Response Deadline.

10 53. Defective Submissions. If a Settlement Class Member's Request for Exclusion is
11 defective as to the requirements listed herein, that Settlement Class Member will be given an
12 opportunity to cure the defect(s). The Settlement Administrator will mail the Settlement Class
13 Member a cure letter within three (3) business days of receiving the defective submission to
14 advise the Settlement Class Member that his or her submission is defective and that the defect
15 must be cured to render the Request for Exclusion valid. The Settlement Class Member will have
16 until the later of (a) the Response Deadline or (b) ten (10) calendar days from the date of the
17 cure letter, whichever date is later, to postmark a revised Request for Exclusion. If a Settlement
18 Class Member responds to a cure letter by filing a defective claim, then the Settlement
19 Administrator will have no further obligation to give notice of a need to cure. If the revised
20 Request for Exclusion is not postmarked within that period, it will be deemed untimely.

21 54. Request for Exclusion Procedures. Any Settlement Class Member wishing to opt-
22 out from inclusion in the Settlement Class must sign and postmark a written Request for
23 Exclusion to the Settlement Administrator by the Response Deadline. The Request for
24 Exclusion must include (a) the Settlement Class Member's name, address, telephone number,
25 and the last four digits of the Settlement Class Member's Social Security number and/or the
26 Employee ID number and (b) a clear statement requesting to be excluded from the settlement of
27 the class claims similar to the following: "I wish to exclude myself from the class settlement
28 reached in the matter of *Acker v. Ritchie Bros Auctioneers America Inc. et al.* I understand that

1 by excluding myself, I will not receive money from the settlement of my individual claims.”
2 The date of the postmark on the return mailing envelope receipt confirmation will be the
3 exclusive means to determine whether a Request for Exclusion has been timely submitted. All
4 Requests for Exclusion will be submitted to the Settlement Administrator, who will certify
5 jointly to Class Counsel and Defendants’ Counsel the Requests for Exclusion that were timely
6 submitted. All Settlement Class Members who do not request exclusion from the Action will be
7 bound by all terms of the Settlement Agreement if the Settlement is granted final approval by
8 the Court. All PAGA Members shall release claims arising under PAGA regardless of their
9 decision to participate in the class settlement.

10 55. Defendants’ Right to Rescind. If three percent (3%) or more of the Settlement
11 Class Members (rounded to the next whole number) elect not to participate in the Settlement,
12 Defendants may, at their election, rescind the Settlement Agreement and all actions taken in
13 furtherance of it will be thereby null and void. Defendants must meet and confer with Class
14 Counsel prior to exercising this right and must make clear their intent to rescind the Agreement
15 within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of these
16 opt-outs. If Defendants exercise their right to rescind the Agreement, Defendants shall be
17 responsible for all Settlement Administration Costs incurred to the date of rescission.

18 56. Settlement Terms Bind All Settlement Class Members Who Do Not Opt-Out.
19 Any Settlement Class Member who does not affirmatively opt-out of the Settlement by
20 submitting a timely and valid Request for Exclusion will be bound by all of its terms, including
21 those pertaining to the Settled Claims, as well as any Judgment that may be entered by the Court
22 if it grants final approval to the Settlement. Settlement Class Members who opt-out of the
23 Settlement shall not be bound by such Judgment or release. The names of Settlement Class
24 Members who have opted-out of the settlement shall be disclosed to the Counsel for Plaintiff
25 and Defendants and noted in the proposed Judgment submitted to the Court. The Parties agree
26 that PAGA Members cannot opt out or otherwise exclude himself or herself from the PAGA
27 portion of the settlement.

28 57. Objection Procedures. To object to the Settlement, a Participating Class Member

1 must postmark a valid Objection to the Settlement Administrator on or before the Response
2 Deadline. The Objection must be signed by the Participating Class Member and contain all
3 information required by this Settlement Agreement including the Settlement Class Member's
4 full name, address, telephone number, the last four digits of their social security number and/or
5 Employee ID number, and the specific reason including any legal grounds for the Participating
6 Class Member's objection. The postmark date will be deemed the exclusive means for
7 determining that the Objection is timely. Participating Class Members who fail to object in the
8 manner specified above will be foreclosed from making a written objection, but shall still have a
9 right to appear at the Final Approval Hearing in order to have their objections heard by the
10 Court. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage
11 Participating Class Members to submit written objections to the Settlement or appeal from the
12 Order and Judgment. Class Counsel will not represent any Participating Class Members with
13 respect to any objections to this Settlement.

14 58. Certification Reports Regarding Individual Settlement Payment Calculations.

15 The Settlement Administrator will provide Defendants' Counsel and Class Counsel a weekly
16 report which certifies: (a) the number of Settlement Class Members who have submitted
17 Requests for Exclusion; (b) the number of re-mailed and/or undeliverable Class Notices; and (c)
18 whether any Settlement Class Member has submitted a challenge to any information contained in
19 the Class Notice. Additionally, the Settlement Administrator will provide to counsel for all
20 Parties any updated reports regarding the administration of the Settlement Agreement as needed
21 or requested. The Settlement Administrator will provide a declaration to Class Counsel in
22 advance of the hearing on Final Approval of the settlement which Class Counsel shall be
23 responsible for reviewing and approving.

24 59. Uncashed Settlement Checks. Any checks issued by the Settlement
25 Administrator to Participating Class Members and PAGA Members will be negotiable for at
26 least one hundred eighty (180) calendar days. If a Participating Class Member and/or PAGA
27 Member does not cash his or her settlement check within 180 days, the uncashed funds, subject
28 to Court approval, shall be distributed to the Controller of the State of California to be held

1 pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of
2 those Participating Class Members and/or PAGA Members who did not cash their checks until
3 such time that they claim their property. The Parties agree that this disposition results in no
4 “unpaid residue” under California Civil Procedure Code § 384, as the entire Net Settlement
5 Amount will be paid out to Participating Class Members and PAGA Members, whether or not
6 they all cash their settlement checks. Therefore, Defendants will not be required to pay any
7 interest on such amounts. The Individual Settlement Payments provided to Participating Class
8 Members and to PAGA Members shall prominently state the expiration date or a statement that
9 the settlement check will expire in one hundred eighty (180) days, or alternatively, such a
10 statement may be made in a letter accompanying the Individual Settlement Payment. Expired
11 Individual Settlement Payments will not be reissued, except for good cause and as mutually
12 agreed by the Parties in writing. The parties agree no unclaimed funds will result from the
13 settlement process detailed in this Agreement.

14 60. Administration of Taxes by the Settlement Administrator. The Settlement
15 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and
16 Class Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts
17 paid pursuant to this Settlement. The Settlement Administrator will also be responsible for
18 forwarding all payroll taxes and penalties to the appropriate government authorities.

19 61. Tax Liability. Defendants make no representation as to the tax treatment or legal
20 effect of the payments called for hereunder, and Plaintiff, Participating Class Members, and
21 PAGA Members are not relying on any statement, representation, or calculation by Defendants
22 or by the Settlement Administrator in this regard. Plaintiff, Participating Class Members, and
23 PAGA Members understand and agree that except for Defendants’ payment of the employer’s
24 portion of any payroll taxes, they will be solely responsible for the payment of any taxes and
25 penalties assessed on the payments described herein. Defendants’ share of any employer-side
26 payroll taxes and other required employer withholdings due on the Individual Settlement
27 Payments, including, but not limited to, Defendants’ FICA and FUTA contributions, shall be
28 paid separate and apart from the Maximum Settlement Amount.

1 62. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
2 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
3 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
4 PARTY”) ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS
5 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
6 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
7 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
8 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
9 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
10 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
11 RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND
12 TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH
13 THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON
14 THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
15 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
16 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
17 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
18 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
19 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
20 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
21 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
22 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF
23 ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
24 AGREEMENT.

25 63. No Prior Assignments. The Parties and their counsel represent, covenant, and
26 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
27 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
28 demand, action, cause of action or right herein released and discharged.

1 64. Release by Participating Class Members, PAGA Members, the LWDA and the
2 State of California. Upon the funding of the Maximum Settlement Amount and all applicable
3 employer-side payroll taxes by Defendant, Participating Class Members shall fully release and
4 discharge the Released Parties from any and all Released Claims for the Class Period. This
5 release shall be binding on all Participating Class Members. All PAGA Members, the LWDA,
6 and the State of California shall release claims under PAGA for the PAGA Period. All PAGA
7 Members shall release claims arising under PAGA regardless of their decision to participate in
8 the class settlement.

9 65. Release of Additional Claims & Rights by Plaintiff. Upon the funding of the
10 Maximum Settlement Amount, Plaintiff Acker agrees – on behalf of himself only – to the
11 additional following General Release: In consideration of Defendants’ promises and agreements
12 as set forth herein, Plaintiff hereby releases all claims related to his employment or alleged
13 employment with Defendants, including all claims alleged in the Action, and all claims known
14 and unknown, without exception, except as may be prohibited by law, including Cal. Lab. Code
15 §§ 248-248.5, California Fair Employment and Housing Act, Cal. Gov’t. Code §§ 12900–
16 12996; Unruh Civil Rights Act, Cal. Civ. Code §§ 51–52 (prohibiting discrimination based on
17 marital status, sexual orientation, and other types of discrimination that may also be covered by
18 the Fair Employment and Housing Act); Cal. Code Regs., tit. 2, § 11036 (prohibits harassment
19 because of pregnancy); California Equal Pay Act, Cal. Lab. Code § 1197.5 (equal pay); Cal.
20 Lab. Code §§ 1102.5–1106 (whistleblower protection for public and private employees); Cal.
21 Lab. Code § 98.6 (whistleblower protection for reporting Labor Code violations); Cal. Lab.
22 Code § 6310 (whistleblower protections for reporting safety/health violations); California
23 Family Rights Act, Cal. Gov’t Code §§ 12945.2, 19702.3 (family leave); Cal. Lab. Code
24 §§ 233–234 (family leave/sick leave); Healthy Workplaces, Healthy Families Act of 2014, Cal.
25 Lab. Code §§ 245–249 (sick leave); Pregnancy Disability Leave, Cal. Code Regs., tit. 2,
26 § 11042 (four month leave requirement for employees that are disabled because of pregnancy);
27 New Parent Leave Act, Cal. Gov’t Code, sec. 2, § 12945.6, sec. 3, § 12945.6 (effective Jan. 1,
28 2020); Cal. Elec. Code §§ 14000 et seq. (voting leave); Cal. Lab. Code § 230 (no adverse

1 employment action for jury duty or for complying with subpoena); the Private Attorney General
2 Act, Cal. Lab. Code §§ 2698-2699 *et seq.*; California Notice of Mass Lay-off, Relocation and
3 Termination laws, Cal. Lab. Code §§ 1400-1408; California AIDS Testing and Confidentiality
4 Law, Cal. Health & Safety Code §§ 120980, 121025; California Confidentiality of Medical
5 Information Act, Cal. Civ. Code § 56 *et seq.*; the California Labor Code, including but not
6 limited to Cal. Lab. Code § 201-2699.5 *et seq.*; the California Business & Professions Code;
7 any statutory provision regarding retaliation or discrimination including retaliation prohibited
8 by Labor Code §§ 1102.5, 232.5, and 132(a), and any other federal, state, or local law, rule, or
9 regulation prohibiting employment discrimination or otherwise relating to employment; and any
10 claims based upon any other theory, whether legal or equitable, arising from or related to any
11 matter or fact arising out the events giving rise to this Agreement. Specifically, Plaintiff waives
12 all rights and benefits afforded by California Civil Code Section 1542, which provides:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST
15 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
16 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
17 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

18 This release specifically excludes claims for unemployment insurance, disability, social
19 security, and workers' compensation (with the exception of claims arising pursuant to
20 California Labor Code Sections 132(a) and 4553).

21 66. Neutral Employment Reference. Defendants agree that they will adopt a neutral
22 reporting policy regarding any future employment references related to Plaintiff. In the event
23 that any potential or future employers of Plaintiff request a reference regarding Defendants'
24 employment of Plaintiff, Defendants shall only provide the Plaintiff's dates of employment, job
25 titles during employment, and final rate of pay. Defendants shall not refer to the Action or this
26 Settlement.

27 67. Nullification of Settlement Agreement. In the event that: (a) the Court does not
28 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any

1 material term of this Settlement Agreement; or (c) the Settlement does not become final as
2 written and agreed to by the Parties for any other reason, then this Settlement Agreement, and
3 any documents generated to bring it into effect, will be null and void, all amounts deposited into
4 the QSF will be returned to Defendants, and the Parties shall be returned to their original
5 respective positions. Any order or judgment entered by the Court in furtherance of this
6 Settlement Agreement will likewise be treated as void from the beginning. Pursuant to
7 California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding,
8 except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final
9 Approval does not occur, the Parties agree that this Settlement Agreement is void, and remains
10 protected by California Evidence Code § 1152. Should the Court fail to approve this settlement
11 for any reason, the Parties agree that they will return to and attend mediation with a mutually
12 agreed mediator in an effort to reach a settlement that may be approved by the Court.

13 68. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
14 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
15 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
16 only, (b) Preliminary Approval of the proposed Settlement Agreement, and (c) setting a date for
17 a Final Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide for
18 the Class Notice to be sent to all Settlement Class Members as specified herein. In conjunction
19 with the Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth
20 the terms of the Settlement, and will include the proposed Class Notice attached as Exhibit A.
21 Class Counsel will be responsible for drafting all documents necessary to obtain preliminary
22 approval but shall provide the proposed order granting preliminary approval to Defendants'
23 Counsel for their approval (which shall not be unreasonably withheld). Defendants agree that
24 they will not oppose Plaintiff's motion for Preliminary Approval or shall not seek to delay the
25 hearings on this motion for more than thirty (30) days from the date obtained by Plaintiff. This
26 is a material term of the settlement and any delay or opposition by Defendants will be grounds
27 for Plaintiff to withdraw from the settlement. Any failure by the Court to fully and completely
28 approve the Agreement as to the Action, or the entry of any Order by another Court with regard

1 to any of the Action which has the effect of preventing the full and complete approval of this
2 Settlement Agreement as written and agreed to by the Parties, will result in this Settlement
3 Agreement and the Settlement Term Sheet entered into by the Parties, and all obligations under
4 this Settlement Agreement and the Settlement Term Sheet being nullified and voided.

5 69. Final Settlement Approval Hearing and Entry of Judgment. Upon completion of the
6 Class Notice process, including the expiration of the deadlines to postmark Requests for
7 Exclusion or objections to the Settlement Agreement, a Final Approval/Settlement Fairness Hearing
8 will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts
9 properly payable for: (a) Individual Settlement Payments; (b) the PAGA Payment to the LWDA; (c)
10 Class Counsel's Attorneys' Fees and Costs; (d) the Class Representative Incentive Payment; and (d) the
11 Settlement Administration Costs. Class Counsel will be responsible for drafting all documents
12 necessary to obtain Final Approval but shall provide the proposed Judgment to Defendants'
13 Counsel for their approval (which shall not be unreasonably withheld). Any failure by the Court
14 to fully and completely approve the Settlement Agreement as to all of the Action, or the entry of
15 any Order by another Court with regard to any of the Action which has the effect of modifying
16 material terms of this Agreement or preventing the full and complete approval of the Settlement
17 Agreement as written and agreed to by the Parties, will result in this Agreement and all
18 obligations under this Agreement being null and void. Defendants agree they shall not oppose
19 the granting of the Motion for Final Approval, provided Defendants have not exercised their
20 right to rescind pursuant to the terms of this Agreement.

21 70. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by
22 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
23 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
24 continuing jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement
25 of the terms of the Settlement, (b) settlement administration matters, and (c) such post-
26 Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

27 71. Exhibits Incorporated by Reference. The terms of this Settlement include the
28 terms set forth in any attached Exhibit (Exhibit A), which are incorporated by this reference as

1 though fully set forth herein. Exhibit A to this Agreement is an integral part of the Settlement.

2 72. Entire Agreement. This Settlement Agreement and any attached Exhibits
3 constitute the entirety of the Parties' Settlement. No other prior or contemporaneous written or
4 oral agreements may be deemed binding on the Parties.

5 73. Amendment or Modification. This Settlement Agreement may be amended or
6 modified only by a written instrument signed by counsel for all Parties or their successors-in-
7 interest.

8 74. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
9 warrant and represent they are expressly authorized by the Parties whom they represent to
10 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
11 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to
12 execute any other documents required to effectuate the terms of this Settlement Agreement. The
13 Parties and their counsel will cooperate with each other and use their best efforts to affect the
14 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
15 content of any document needed to implement the Settlement, or on any supplemental
16 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
17 seek the assistance of the Court to resolve such disagreement.

18 75. Binding on Successors and Assigns. This Settlement Agreement will be binding
19 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
20 defined.

21 76. California Law Governs. All terms of this Settlement Agreement hereto will be
22 governed by and interpreted according to the laws of the State of California.

23 77. Execution and Counterparts. This Settlement Agreement is subject only to the
24 execution of all Parties. However, the Settlement Agreement may be executed in one or more
25 counterparts. All executed counterparts and each of them, including facsimile and scanned
26 copies of the signature page, will be deemed to be one and the same instrument provided that
27 counsel for the Parties will exchange among themselves original signed counterparts.

28 78. Acknowledgement that the Settlement is Fair and Reasonable. The Parties

1 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
2 and have arrived at this Settlement after arm's-length negotiations and in the context of
3 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
4 further acknowledge that they are each represented by competent counsel and that they have had
5 an opportunity to consult with their counsel regarding the fairness and reasonableness of this
6 Settlement.

7 79. Invalidity of Any Provision. Before declaring any provision of this Agreement
8 invalid, the Court will first attempt to construe the provision as valid to the fullest extent
9 possible consistent with applicable precedents so as to define all provisions of this Agreement
10 valid and enforceable.

11 80. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
12 class certification for purposes of this Settlement only; except, however, that either party may
13 appeal any court order that materially alters the Settlement Agreement's terms.

14 81. Class Action Certification for Settlement Purposes Only. The Parties agree to
15 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
16 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
17 that certification for purposes of the Settlement is not an admission that class action certification
18 is proper under the standards applied to contested certification motions and that this Agreement
19 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
20 should be certified or (b) Defendants are liable to Plaintiff or any Settlement Class Member,
21 other than according to the Settlement's terms.

22 82. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
23 dispute that has arisen between them and to avoid the burden, expense and risk of continued
24 litigation. In entering into this Agreement, Defendants do not admit, and specifically denies,
25 they have violated any federal, state, or local law; violated any regulations or guidelines
26 promulgated pursuant to any statute or any other applicable laws, regulations or legal
27 requirements; breached any contract; violated or breached any duty; engaged in any
28 misrepresentation or deception; or engaged in any other unlawful conduct with respect to their

1 employees. Neither this Agreement, nor any of its terms or provisions, nor any of the
2 negotiations connected with it, shall be construed as an admission or concession by Defendants
3 of any such violations or failures to comply with any applicable law. Except as necessary in a
4 proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions
5 shall not be offered or received as evidence in any action or proceeding to establish any liability
6 or admission on the part of Defendants or to establish the existence of any condition
7 constituting a violation of, or a non-compliance with, federal, state, local or other applicable
8 law.

9 83. Captions. The captions and section numbers in this Agreement are inserted for
10 the reader's convenience, and in no way define, limit, construe or describe the scope or intent of
11 the provisions of this Agreement.

12 84. Waiver. No waiver of any condition or covenant contained in this Settlement
13 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be
14 considered to imply or constitute a further waiver by such party of the same or any other
15 condition, covenant, right or remedy.

16 85. Mutual Preparation. The Parties have had a full opportunity to negotiate the
17 terms and conditions of this Agreement. Accordingly, this Agreement will not be construed
18 more strictly against one Party than another merely by virtue of the fact that it may have been
19 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
20 negotiations between the Parties, all Parties have contributed to the preparation of this
21 Settlement Agreement.

22 86. Representation By Counsel. The Parties acknowledge that they have been
23 represented by counsel throughout all negotiations that preceded the execution of this
24 Agreement, and that this Agreement has been executed with the consent and advice of counsel
25 and reviewed in full. Further, Plaintiff and Class Counsel warrant and represent that there are no
26 liens on the Agreement.

27 87. All Terms Subject to Final Court Approval. All amounts and procedures
28 described in this Settlement Agreement herein will be subject to final Court approval.

1 88. Cooperation and Execution of Necessary Documents. The Parties agree to
2 cooperate to promote participation in the Settlement, and in seeking court approval of the
3 Settlement. The Parties and their counsel agree not to take any action to encourage any
4 Settlement Class Members to opt out of and/or object to the Settlement. Defendants agree not to
5 obtain any settlement agreement waivers, Pick Up Stix agreements or arbitration agreements
6 from any Settlement Class Member prior to the funding of the Maximum Settlement Amount
7 concerning claims released via this Agreement, or enter into any arbitration agreement with any
8 Settlement Class Member that covers the claims released via this Agreement during the
9 Settlement approval process prior to the funding of the Maximum Settlement Amount and that
10 the Parties will work in good faith to reach an agreement approved by the Court.

11 89. Enforcement and Continuing Jurisdiction of the Court. To the extent consistent
12 with class action procedure, this Settlement Agreement shall be enforceable by the Court
13 pursuant to California Code of Civil Procedure § 664.6. The Court shall retain continuing
14 jurisdiction over this Action and over all Parties and Settlement Class Members, to the fullest
15 extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to
16 adjudicate any claimed breaches of this Settlement Agreement. The Court may award
17 reasonable attorneys' fees and costs to the prevailing party in any motion or action taken and
18 based on an alleged violation of any material term of the Settlement Agreement.

19 90. Voluntary Agreement. The Parties acknowledge that they have entered into this
20 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
21 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
22 statements made by the other Parties other than those contained in this Settlement Agreement.
23 Each of the Parties hereto expressly waives any right he/they might ever have to claim that this
24 Settlement Agreement was in any way induced by fraud.

25 91. Confidentiality. The Parties and their counsel agree to keep the terms of the
26 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff,
27 Class Counsel, Defendant and its counsel agree that they will not issue any press releases,
28 initiate any contact with the press, respond to any press inquiry or have any communication

1 with the press about the fact, amount or terms of the Settlement Agreement. Notwithstanding
2 anything in this provision, Plaintiff's Counsel can discuss the Settlement with Plaintiff and with
3 Settlement Class Members and can include it in all necessary Court and ancillary documents
4 supporting the resolution of this Action.

5 92. Binding Agreement. The Parties warrant that they understand and have full
6 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
7 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
8 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
9 provisions that otherwise might apply under federal or state law.

10
11 APPROVED AS TO FORM AND CONTENT:

12 Dated: 07.24.2021

PLAINTIFF

13 By: Electronically Signed _____ 2021-07-25 05:05:07 UTC - 7614.24.128
14 AssureSign® Ronald Acker e47c0409-8615-478c-b070-ad017b5960
15 Ronald Acker

16
17
18 Dated: _____

**DEFENDANTS RITCHIE BROS
AUCTIONEERS INC. and RITCHIE BROS
AUCTION**

19
20
21 By: _____
22 Name: _____
23 Title: _____
24
25
26
27
28

1 with the press about the fact, amount or terms of the Settlement Agreement. Notwithstanding
2 anything in this provision, Plaintiff's Counsel can discuss the Settlement with Plaintiff and with
3 Settlement Class Members and can include it in all necessary Court and ancillary documents
4 supporting the resolution of this Action.

5 92. Binding Agreement. The Parties warrant that they understand and have full
6 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
7 fully enforceable and binding on all Parties, and agree that it will be admissible and subject to
8 disclosure in any proceeding to enforce its terms, notwithstanding any settlement confidentiality
9 provisions that otherwise might apply under federal or state law.

10
11 APPROVED AS TO FORM AND CONTENT:

12 Dated: _____

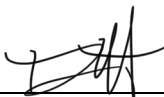
PLAINTIFF

13 By:

14 _____
15 Ronald Acker

16
17
18 Dated: July 24, 2021

**DEFENDANTS RITCHIE BROS
AUCTIONEERS INC. and RITCHIE BROS
AUCTION**

19
20
21 By:  _____

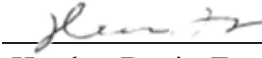
22 Name: DARREN WATT

23 Title: GENERAL COUNSEL

1 APPROVED AS TO FORM ONLY:
2

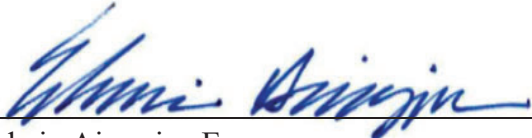
3 Dated: July 28, 2021
4

PROTECTION LAW GROUP, LLP

5 By: 
6 Heather Davis, Esq.
7 Amir Nayebdadash, Esq.
8 Attorneys for Plaintiff


9
10 Dated: July 26

LAWYERS FOR JUSTICE PC

11
12 By: 
13 Edwin Aiwazian Esq.
14 Attorneys for Plaintiff

15
16 Dated: July 28, 2021
17

DORSEY & WHITNEY LLP

18 By: 
19 Michael Droke, Esq.
20 Jessica Linehan, Esq.
21 Alyson Dieckman, Esq.
22 Attorneys for Defendants
23
24
25
26
27
28