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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **FOR THE COUNTY OF SAN DIEGO**

23 DARRELL COLTER, individually, and on  
24 behalf of all others similarly situated,

25 *Plaintiff,*

26 v.

27 PROPULSION CONTROLS ENGINEERING, a  
28 California corporation, and DOES 1 through 10,  
inclusive,

*Defendants.*

Case No.: 37-2020-00030682

[Hon. Keri Katz]

**STIPULATION OF SETTLEMENT**

Complaint Filed: September 1, 2020  
Trial Date: N/A  
Department: 74

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of  
2 the Court pursuant to the California Rules of Court, that the Settlement of this Litigation shall be  
3 effectuated upon and subject to the following terms and conditions.

4 This Stipulation of Settlement is made by and between the Named Plaintiff, DARRELL  
5 COLTER (“Plaintiff”), on his own behalf and on behalf of all members of the Settlement Class,  
6 as defined below, and Defendant Propulsion Controls Engineering, LLC (previously Propulsion  
7 Controls Engineering, Inc.) (“Defendant,” and together with Plaintiff, the “Parties”), in the  
8 lawsuit entitled *Colter v. Propulsion Controls Engineering* filed in San Diego Superior Court,  
9 Case No. 37-2020-00030682. This Stipulation of Settlement resolves all claims that were  
10 asserted or could have been asserted against Defendant pertaining to the claims in the Litigation,  
11 in consideration for the Releases set forth below and other terms herein.

12 **I. DEFINITIONS**

13 **A. Administrative Costs.** All administrative costs of settlement, including cost of  
14 notice to the Settlement Class, settlement administration, and any fees and costs incurred or charged  
15 by the Settlement Administrator in connection with the execution of its duties under this Stipulation  
16 of Settlement.

17 **B. Agreement or Settlement Agreement.** The terms “Agreement” or “Settlement  
18 Agreement” are used synonymously herein to mean this Stipulation of Settlement.

19 **C. Class Counsel.** The term “Class Counsel” as used herein means: WILSHIRE LAW  
20 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement  
21 Class. The term Class Counsel shall be used synonymously with the term Plaintiff’s Counsel.

22 **D. Court.** The term “Court” as used herein means the Superior Court of the State of  
23 California for the County of San Diego.

24 **E. Final.** The term “Final” means: (a) the 65th calendar day after a signed order  
25 approving this Agreement has been filed provided no motion to intervene or motion to vacate the  
26 judgment, appeal, writ or other appellate proceeding has been filed; or (b) the seventh (7th) calendar  
27 day after any motion to intervene or motion to vacate the judgment, appeal, writ, or other appellate  
28 proceeding opposing the Agreement has been finally dismissed with no material change to the terms

1 of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

2 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval  
3 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and  
4 Approval Hearing in accordance with the terms herein, approving this Agreement.

5 **G. Defendant.** The term “Defendant” as used herein means Propulsion Controls  
6 Engineering, LLC (previously Propulsion Controls Engineering, Inc.).

7 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage  
8 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal  
9 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such  
10 as for unemployment insurance.

11 **I. Litigation.** The term “Litigation” as used herein means the action entitled filed in  
12 San Diego County Superior Court, Case No. 37-2020-00030682.

13 **J. Named Plaintiff or Class Representative.** The term “Named Plaintiff” or “Class  
14 Representative” as used herein means Darrell Colter.

15 **K. Net Settlement Fund or Net Settlement Amount.** The term “Net Settlement  
16 Amount” or “Net Settlement Fund” as used herein means the Settlement Amount minus any award  
17 of attorneys’ fees and Litigation costs, Administrative Costs, enhancement to the Named Plaintiff,  
18 and civil penalties allocated to the California’s Private Attorney General Act (“PAGA”) claim (the  
19 “PAGA Settlement”), and as provided in Sections VIII, XIII, XIV, XV, and XVI, respectively.

20 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” means payments  
21 made to the Settlement Class from the Net Settlement Amount, less the employees’ portion of any  
22 required federal and state tax withholdings. Net Settlement Payments will be each Class Member’s  
23 proportional share of the Net Settlement Amount (which shall be determined using the calculations  
24 provided in this Settlement).

25 **M. Settlement.** The term “Settlement” as used herein means this Agreement to resolve  
26 the Litigation.

27 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein  
28 means Phoenix Class Action Administration Solutions, which will be responsible for the

1 administration of the Settlement Amount, as defined below, and all related matters.

2 **O. Settlement Amount.** The terms “Settlement Amount” as used herein means the sum  
3 of One Million Three Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$1,375,000.00),  
4 which shall be paid by Defendant to resolve this Litigation in exchange for the releases set forth in  
5 this Agreement, subject to Court approval, and from which all Net Settlement Payments, Court-  
6 approved attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative Costs pursuant  
7 to Section VIII, enhancement to Named Plaintiff pursuant to Section XIV, and the PAGA Settlement  
8 pursuant to Section XVI shall be paid, except as provided herein. With the exception of the Employer  
9 Taxes and any amount that may be required under Section XI(C), in no event shall Defendant be  
10 required to pay anything more than the Settlement Amount.

11 **P. Settlement Class.** For settlement purposes only, the Parties agree to the certification  
12 of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

13 All persons who were employed by Defendant in California and performed  
14 work for Defendant in California as a non-exempt employee during the  
15 Settlement Period (together, collectively referred to as the “Class Members”).

16 **Q. Settlement Period.** The term “Settlement Period” as used herein means the  
17 period from September 1, 2016 through January 19, 2022.

18 **R. Aggrieved Employees.** The Settlement Class or “Class Members” shall also  
19 include all Aggrieved Employees. Aggrieved Employees include:

20 All persons who were employed by Defendant in California and performed  
21 work for Defendant in California as a non-exempt employee during the  
22 PAGA Claim Period.

23 **S. PAGA Claim Period.** The “PAGA Claim Period” as used herein  
24 means the period from October 6, 2019 through January 19, 2022.

25 **T. LWDA Payment.** “LWDA Payment” means \$37,500, which represents 75% of  
26 the Fifty Thousand Dollars (\$50,000) being paid to resolve the claim for civil penalties  
27 pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code section 2698  
28 *et. seq.* (“PAGA”) asserted in this Litigation (“PAGA Settlement”), and which will be paid to

1 the Labor and Workforce Development Agency pursuant to Section XVI of this Settlement,  
2 subject to Court approval.

3 **U. Net PAGA Amount.** “Net PAGA Amount” means \$12,500, which represents  
4 25% of the Fifty Thousand Dollars (\$50,000) being paid to resolve the claim for civil  
5 penalties pursuant to PAGA, and which will be allocated and paid proportionately exclusively  
6 to the Aggrieved Employees, pursuant to the formula set forth in Section XVI of this  
7 Settlement, subject to Court approval.

## 8 **II. BACKGROUND**

9 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all  
10 others similarly situated, that Defendant violated California state wage and hour laws, the California  
11 *Business and Professions Code* Section 17200 *et seq.*, and PAGA, because of Defendant’s California  
12 wage and hour policies and practices. Specifically, Plaintiff alleges Defendant failed to pay its  
13 employees at or above the applicable minimum wage rates, failed to provide regular, overtime, and  
14 double time pay, failed to pay all wages earned due to time rounding, failed to provide meal breaks  
15 (including first and second meal breaks), failed to authorize and permit legally compliant rest breaks  
16 each day based on the hours worked by each employee, and failed to provide reimbursements for all  
17 necessary business-related expenses incurred by the class members. Plaintiff further alleged that the  
18 aforementioned resulted in the employees receiving inaccurate wage statements, and the  
19 underpayment of wages to employees upon termination and/or resignation.

20 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,  
21 including a sample of class member timekeeping and payroll records, Defendant’s policies and  
22 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of  
23 wage statements, and providing all wages at separation, as well as information regarding the number  
24 of putative class members and the mix of current versus former employees, the wage rates in effect,  
25 and the amount of meal and rest period premium wages paid to class members.

26 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length  
27 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.  
28 The Parties participated in a full day of mediation before Steven J. Serratore, Esq., a well-respected

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1 wage and hour class action mediator, that resulted in a tentative settlement of the Litigation, subject  
2 to the approval of the Court, and finalization of a formal Stipulation of Settlement. The Parties have  
3 engaged in extensive negotiations about the terms and conditions of the Settlement at the mediation  
4 and subsequent thereto. The Parties have now formalized the Settlement Agreement for submission  
5 to the Court for preliminary and Final Approval.

6 C. Class Counsel has conducted an investigation of the law and facts relating to the  
7 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues  
8 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation  
9 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of  
10 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be  
11 received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement,  
12 that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,  
13 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf and  
14 on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set  
15 forth herein.

16 D. Defendant has concluded that, because of the substantial expense of defending against  
17 the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience  
18 involved, and the concomitant disruption to its business operations, it is in Defendant’s best interests  
19 to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted  
20 against it in the Litigation. However, Defendant nevertheless desires to settle the Litigation for the  
21 purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose  
22 of putting to rest the controversies engendered by the Litigation.

23 E. This Agreement is intended to and does effectuate the full, final and complete  
24 settlement of all allegations and claims that were asserted, or could have been asserted, in the  
25 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II(A).

26 **III. JURISDICTION**

27 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The  
28 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,

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1 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted  
2 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to  
3 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action  
4 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with  
5 the terms set forth herein.

6 **IV. STIPULATION OF CLASS CERTIFICATION**

7 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement  
8 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the  
9 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for  
10 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification  
11 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,  
12 the issue of whether a class should be certified in a non-settlement context in the Litigation.  
13 Defendant expressly reserves the right to oppose class certification and/or proactively move to deny  
14 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

15 **V. MOTIONS FOR PRELIMINARY AND FINAL APPROVAL**

16 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the  
17 Settlement including the Notice of Proposed Class Action Settlement, in a form substantially similar  
18 to that which is attached hereto as **Exhibit “A”**, and including certification of the Settlement Class  
19 for settlement purposes only.

20 The date that the Court grants Preliminary Approval of this Agreement will be the  
21 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and  
22 will provide Defendant’s counsel the opportunity to review it and provide input at least three business  
23 days before it is due to be filed. On the same date on which it is filed with the Court, Class Counsel  
24 shall concurrently submit the Motion for Preliminary Approval to the Labor & Workforce  
25 Development Agency in compliance with Labor Code § 2698 *et seq.*, the Private Attorneys General  
26 Act.

27 On the date set forth in the order granting preliminary approval of this Settlement or otherwise  
28 set by the Court, a final fairness and approval hearing shall be held before the Court to review this

1 Settlement, consider any objections thereto, and determine whether to grant final approval of the  
2 Settlement and enter judgment on the same. Named Plaintiff will prepare the Motion for Final  
3 Approval and will provide Defendant's counsel the opportunity to review it and provide input at least  
4 three business days before it is due to be filed.

5 At the motion for final approval hearing, the Parties shall ask the Court to give final approval  
6 to this Settlement and Plaintiff shall submit to the Court a proposed Final Approval Order and  
7 Judgment granting final approval of this Settlement and entering Judgment.

8 **VI. STATEMENT OF NO ADMISSION**

9 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon any  
10 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an  
11 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims  
12 made against them in the Litigation.

13 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any  
14 statements, discussions or communications, nor any materials prepared, exchanged, issued or used  
15 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the  
16 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible  
17 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or  
18 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,  
19 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties  
20 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or  
21 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported  
22 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or  
23 executive order, or any obligation or duty at law or in equity, or for any other purpose.  
24 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the  
25 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement  
26 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

27 **C.** None of the documents produced or created by Named Plaintiff or the Settlement  
28 Class in connection with the settlement administration and procedures constitute, and they are not



1 intended to constitute, an admission by Defendant of any violation of any federal, state, or local law,  
2 statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

3 **D.** The Parties agree that class certification pursuant to California *Code of Civil*  
4 *Procedure* Section 382 under the terms of this Agreement is for settlement purposes only, and that  
5 certification of the class as defined herein is appropriate and meets the standards set forth in  
6 California Code of Civil Procedure section 382. Nothing in this Agreement will be construed as an  
7 admission or acknowledgment of any kind that any class should be certified or given collective  
8 treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor  
9 the Court's actions with regard to this Agreement will be admissible in any court or other tribunal  
10 regarding the propriety of class certification or collective treatment. In the event that this Agreement  
11 is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable,  
12 Named Plaintiff will not be deemed to have waived, limited, or affected in any way any claims,  
13 rights, or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or  
14 affected in any way any of their objections or defenses in the Litigation.

15 **VII. WAIVER, RELEASE AND CONFIDENTIALITY**

16 **A. Release as to All Settlement Class Members.**

17 Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in  
18 Section I(E) above), Named Plaintiff, on behalf of himself and the State of California, and all  
19 members of the Settlement Class, including their heirs, agents, representatives, successors, assigns,  
20 and estates, except those that make a valid and timely request to be excluded from the Settlement  
21 Class and Settlement, shall be deemed to have fully, finally, and forever waived, released,  
22 discharged, and promised never to assert in any forum any and all claims, causes of action, demands,  
23 rights, and liability that were alleged in the Second Amended Complaint or which could have been  
24 alleged in the Second Amended Complaint based on the facts and allegations asserted therein arising  
25 during the Settlement Period against Defendant, and its parents, subsidiaries, affiliates, officers,  
26 shareholders, directors, agents, employees, attorneys, and insurers ("Released Parties"), including  
27 any claims for violation of the California Labor Code or any other state, local, or federal law, statute,  
28 regulation or ordinance imposing liability and/or obligations that could be brought based on the

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1 allegations in the Second Amended Complaint, through the Settlement Period, including the Fair  
2 Labor Standards Act (the “Released Claims”). This release specifically includes claims for any  
3 wages, statutory penalties, civil penalties, liquidated damages, interest, restitution, attorneys’ fees  
4 and costs for the following: 1) all claims, under any legal theory of liability, for the failure to pay  
5 overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198,  
6 the IWC Wage Orders or any comparable federal statute under any theory of liability, including the  
7 Fair Labor Standards Act (FLSA); 2) all claims, under any legal theory of liability, for the failure to  
8 pay all wages of any kind, including any minimum wage or straight time wages, owed pursuant to  
9 California Labor Code §§ 204, 510, 1194, 1194.2, 1197, and 1198, the IWC Wage Orders, local  
10 minimum wage ordinances, or any comparable federal statute under any theory of liability, including  
11 the Fair Labor Standards Act (FLSA); 3) all claims, under any legal theory of liability, for failure to  
12 provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage  
13 Orders; 4) all claims, under any legal theory of liability, for the failure to provide rest periods  
14 pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims, under any legal  
15 theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to  
16 California Labor Code § 226.7(b), and the IWC Wage Orders; 6) all claims, under any legal theory  
17 of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code  
18 § 2802; 7) all claims, under any legal theory of liability, for violation of Business & Professions  
19 Code §§ 17200, *et seq.*; 8) all claims, under any legal theory of liability, for any penalties of any  
20 kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class  
21 Members pursuant to California Labor Code §§ 201-203; 9) all claims, under any legal theory of  
22 liability, for any penalties of any kind arising from any alleged wage statement violations pursuant  
23 to California Labor Code §§ 226, 1174, and 1174.5; and 10-1) all claims, under any legal theory of  
24 liability, for civil penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*) for the various Labor  
25 Code violations alleged, including penalties pursuant to California Labor Code §§ 210, 226.3,  
26 1174.5, 558, and 1197.1.

27 **B. Release of Plaintiff, State of California, and Aggrieved Employees**

28 Upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in

1 Section I(E) above), Named Plaintiff, on behalf of himself and the State of California, and all  
 2 Aggrieved Employees, including their heirs, agents, representatives, successors, assigns and estates,  
 3 shall be deemed to have fully, finally and forever released and discharged the Released Parties from  
 4 any and all causes of action, claims, demands, rights, and liability, arising from or based on a claim  
 5 for civil penalties under PAGA, Labor Code sec. 2698, *et seq.*, for any violations of the Labor Code  
 6 or Wage Orders alleged or that could have been alleged in Plaintiff's Second Amended Complaint  
 7 based on the facts and allegations alleged therein, as well as any based on the alleged violations  
 8 asserted in the October 6, 2020 Notice of Labor Code Violations and PAGA Penalties and the  
 9 November 19, 2021 Amended Notice of Labor Code Violations and PAGA Penalties.

10 **C. General Release by Named Plaintiff Only.**

11 In addition, upon the date the Court's Final Approval Order becomes "Final," Named  
 12 Plaintiff for himself, and his heirs, successors, predecessors, attorneys, agents, representatives and  
 13 assigns, fully and forever releases and discharges the Released Parties from any and all charges,  
 14 complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions,  
 15 causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages,  
 16 penalties, liquidated damages, and attorneys' fees and costs actually incurred) of any nature  
 17 whatsoever, from the beginning of time through the date of his signature on this Settlement, known  
 18 or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based  
 19 upon, or relating to his employment with Defendant or the remuneration for such employment.  
 20 Without limiting the generality of the foregoing, Named Plaintiff expressly releases all claims which  
 21 were or could have been raised in the Litigation and all claims or rights arising out of alleged  
 22 violations of any contracts, express or implied (including but not limited to any contract of  
 23 employment); any contract or covenant of good faith or fair dealing (express or implied); any tort,  
 24 including negligence, fraud, misrepresentation under California Labor Code section 970, negligent  
 25 infliction of emotional distress, intentional infliction of emotional distress, and defamation; any  
 26 "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on  
 27 Defendant's right to discharge employees or refuse to hire applicants; and any federal, state, or other  
 28 governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil

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1 Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment,  
2 including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981  
3 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (disability  
4 discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with  
5 Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (6) Family and Medical Leave  
6 Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (7) California Fair Employment and Housing  
7 Act, Cal. Gov’t Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing,  
8 including discrimination or harassment based on race, religious creed, color, national origin,  
9 ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation,  
10 genetic, or age, including retaliation for reporting discrimination or harassment); (8) California  
11 Family Rights Act, Cal. Gov’t Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor  
12 Code or any Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29  
13 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race, color, religion, sex, and national origin  
14 discrimination or harassment); (12) Executive Order 11141 (age discrimination); and (13) Employee  
15 Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

16 **D. Plaintiff’s Release of Unknown Claims.**

17 In addition to the releases made in Sections VII (A), (B), and (C) above, Named Plaintiff, in  
18 his individual capacity, makes the additional following express waiver of California Civil Code  
19 section 1542, or any law or principle of common law or equity that is similar, comparable, or  
20 equivalent. For the purpose of implementing a full and complete release, Plaintiff expressly  
21 acknowledges that the release given in this Settlement is intended to include in its effect (without  
22 limitation) claims that he did not know or suspect to exist in his favor at the time of execution of this  
23 Settlement, regardless of whether the knowledge of such claims, or the facts upon which they might  
24 be based, would materially have affected the settlement of this matter, and that the consideration  
25 given under the Settlement was also for the release of those claims and contemplates the  
26 extinguishment of any such unknown claims.

27 Named Plaintiff stipulates and agrees that, upon the date the Court’s Final Approval Order  
28 becomes “Final”, Named Plaintiff shall be deemed to have expressly waived and relinquished, to the

1 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California  
2 Civil Code, or any other similar provision under federal or state law, which provides:

3  
4 **“SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY  
5 GENERAL RELEASE.] A GENERAL RELEASE DOES NOT  
6 EXTEND TO CLAIMS THAT THE CREDITOR OR  
7 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF  
9 EXECUTING THE RELEASE AND THAT, IF KNOWN BY  
10 HIM OR HER WOULD HAVE MATERIALLY AFFECTED  
11 HIS OR HER SETTLEMENT WITH THE DEBTOR OR  
12 RELEASED PARTY.”**

13 Accordingly, even if the facts relating in any manner to this Settlement are found hereafter to be  
14 other than or different from the facts Plaintiff now knows or believes to be true, or if Plaintiff  
15 hereafter discovers facts in addition to those he now knows or believes to be true, Named Plaintiff,  
16 upon the date the Court’s Final Approval Order becomes “Final”, shall be deemed to have fully,  
17 finally, and forever settled and released any and all claims against the Released Parties that were  
18 alleged or could have been alleged in the Litigation, as well as any other claims, whether known or  
19 unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory  
20 of law or equity, including without limitation, conduct which is negligent, intentional, with or without  
21 malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence  
22 of such different or additional facts.

23 **VIII. SETTLEMENT ADMINISTRATOR**

24 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix  
25 Class Action Administration Solutions as the Settlement Administrator to administer the Settlement,  
26 which includes but is not limited to distributing and responding to inquiries about the Notice of  
27 Proposed Class Action Settlement, determining the validity of any disputes and opt-outs, calculating  
28 the Net Settlement Amount and all amounts to be paid from the Net Settlement Amount, distribution  
of the Net Settlement Amount, providing weekly reporting to Class Counsel and Defendant’s  
Counsel, administering and making payment of any funds remaining from uncashed checks, and  
making all necessary tax withholding and payments and preparing all tax reporting to the appropriate

1 taxing authorities. The Settlement Administrator shall agree to all of the terms and conditions of this  
2 Settlement.

3 All Administrative Costs associated with the foregoing duties, estimated to be no more  
4 \$15,000.00, will be paid from the Settlement Amount, not in addition to the Settlement Amount.  
5 Any charges and expenses of the Settlement Administrator greater than the allocated \$15,000.00 will  
6 come from the Settlement Amount. If the actual Settlement Administrator fees are less than the  
7 Parties' estimation, the difference between the actual and estimated Settlement Administrator fees  
8 will revert to the Net Settlement Amount. The Parties agree that this Agreement may be provided to  
9 the Settlement Administrator to effectuate its implementation of the settlement procedures herein.

10 The Parties understand and agree that the Settlement Amount will qualify and be  
11 characterized as a Qualified Settlement Fund ("QSF") under the provisions of the U.S. Treasury  
12 Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a separate entity for purposes  
13 of all federal, state and local taxes, and further agree to treat the QSF on a basis consistent  
14 therewith, and the QSF will bear full responsibility for all taxes associated with the QSF and  
15 payments under this Agreement.

16 All taxes (including any interest or penalties) arising with respect to income earned by the  
17 QSF, shall be paid from the QSF. All expenses and costs incurred in connection with the operation  
18 and implementation of this section (including without limitation, expenses of attorneys and/or  
19 accountants and mailing and distribution expenses related to filing (or failing to file) any necessary  
20 tax returns) shall be paid from the QSF by the Settlement Administrator.

21 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

22 **A. Notice.**

23 The Notice of Class Action and Proposed Settlement (the "Notice") will be provided to the  
24 members of the Settlement Class as follows:

25 No later than thirty (30) calendar days after the Court's Preliminary Approval order,  
26 Defendant will provide to the Settlement Administrator the following information about each  
27 Settlement Class Member ("Class List"): (1) name; (2) last known home address; (3) the dates of  
28 employment for each Settlement Class Member; and (4) Social Security number. Defendant further

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1 agrees to consult with the Settlement Administrator prior to the production date to ensure that the  
2 format will be acceptable to the Settlement Administrator. This information shall be treated as  
3 confidential and shall not be disclosed to Plaintiff, Class Counsel or any other person without prior  
4 approval from Defendant’s Counsel.

5 The Settlement Administrator shall run all the addresses provided through the United States  
6 Postal Service NCOA database (which provides updated addresses for any individual who has moved  
7 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain  
8 current address information, and shall mail the Notice to the members of the Settlement Class via  
9 first-class regular U.S. Mail using the most current mailing address information available, within  
10 twenty (20) calendar days of the receipt of the Class List from Defendant. The Notice shall provide  
11 the members of the Settlement Class forty-five (45) days’ notice of all applicable dates and deadlines.

12 The Notice will also include information regarding the nature of the Litigation; a summary  
13 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has  
14 preliminarily approved the Settlement; the nature and scope of the claims being released; the  
15 procedure and time period for objecting to or requesting exclusion from the Settlement, the date and  
16 location of the Final Approval hearing; the number of Eligible Workweeks, as defined in Section  
17 XI(A) below, that each Settlement Class Member has worked as a non-exempt employee in  
18 California at any time during the Settlement Period, and the estimated potential recovery for the  
19 proposed Settlement Class Member.

20 For each Settlement Class Member, the Notice will identify the number of Eligible  
21 Workweeks that s/he was employed and inform the employee of his or her right to dispute this  
22 number by submitting a dispute within forty-five (45) days of the postmark date of the Notice Absent  
23 the receipt of a dispute, the number of workweeks identified in the Notice shall be deemed accurate.  
24 The settlement of any disputes concerning the number of Eligible Workweeks is discussed in Section  
25 X, below.

26 If a Notice is returned from the initial notice mailing, the Settlement Administrator will  
27 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator  
28 is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member.

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1 Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-  
2 deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. The  
3 Settlement Administrator will remain all returned, undelivered mail within five (5) days of receiving  
4 notice that a Notice was undeliverable. If a Class Member’s notice is re-mailed, that Class Member  
5 shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial  
6 mailing, whichever is later, in which to mail a Request for Exclusion or objection to the Settlement.  
7 Class Members shall not be required to submit claim forms in order to receive their Net Settlement  
8 Payments.

9 It is the intent of the Parties that reasonable means be used to locate Class Members and that  
10 the Settlement Administrator be given discretion to take steps to facilitate notice of this Settlement  
11 and delivery of the Net Settlement Payments to the Settlement Class. If no address can be determined  
12 by the Settlement Administrator after these efforts, no further efforts to determine an address shall  
13 be required.

14 Should any member of the Settlement Class timely submit a dispute or Request for Exclusion  
15 with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the  
16 Settlement Administrator of each timely submitted dispute or Request for Exclusion send a  
17 deficiency notice. The deficiency notice will provide the member of the Settlement Class no more  
18 than fifteen (15) days from the mailing of the deficiency notice to postmark a written response to  
19 cure all deficiencies. The failure of a member of the Settlement Class to timely submit a dispute or  
20 Request for Exclusion or timely respond to a notice of deficiency shall invalidate the dispute or  
21 Request for Exclusion unless all Parties’ counsel agree to allow the dispute or Request for Exclusion.

22 In the event a Class Member’s Notice remains undeliverable sixty (60) days after the Notice  
23 was initially mailed, the Settlement Administrator will not mail the Class Member’s Net Settlement  
24 Payment. The Settlement Administrator will hold the Class Member’s Net Settlement Payment  
25 during the check cashing period on behalf of the Class Member. If at the conclusion of the check  
26 cashing period the Class Member’s Notice and Net Settlement Payment remain undeliverable and/or  
27 unclaimed and uncashed, the Settlement Administrator will distribute the funds from  
28 unclaimed/uncashed checks in accordance with the procedures set forth in Section XI(D) below.



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1 Upon the date the Court’s Final Approval Order becomes “Final”, all Class Members and Aggrieved  
2 Employees will be bound by this Settlement and the Releases herein, regardless of whether or not  
3 they received a Net Settlement Payment or a portion of the Net PAGA Amount.

4 No later than twenty-five (25) days before the Final Approval Hearing, the Settlement  
5 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to  
6 the completion of the Notice process, including the number of attempts to obtain valid mailing  
7 addresses for and re-sending of any returned Notices, as well as the number of disputes, Requests for  
8 Exclusion, objections, and deficiencies that the Settlement Administrator received.

9 Compliance with the procedures described in this section shall constitute due and  
10 sufficient notice to Class Members of this proposed Settlement and the final approval hearing  
11 and shall satisfy the requirements of due process. Nothing else shall be required of the Parties,  
12 Class Counsel, Defendant’s Counsel, or the Settlement Administrator to provide notice of the  
13 proposed Settlement and the final approval hearing. However, if any Class Member objects to  
14 the Settlement and the final approval hearing is continued as a result, the Settlement  
15 Administrator shall provide notice to the objecting party of the continued hearing date.

16 **B. Objections.**

17 Named Plaintiff may not object to the Settlement. In order for any Settlement Class Member  
18 to object to this Settlement, or any term of it, the person making the objection must not submit a  
19 Request for Exclusion (i.e., must not opt out). To object to the Settlement in writing, a Class Member  
20 must complete, sign, and send a written notice of objection to the Settlement Administrator,  
21 postmarked no later than forty-five (45) days after the Notice was initially mailed to the Class  
22 Members, setting forth the grounds for the objection, along with all supporting documents, the Class  
23 Member’s name, address, telephone number and reference to this Litigation, along with whether they  
24 intend to appear at the final approval hearing, either personally or through an attorney at his or her  
25 own expense. The date of mailing of the Notice to the objecting Settlement Class Member, and the  
26 date the signed Objection was postmarked, shall be conclusively determined according to the records  
27 of the Settlement Administrator. The Settlement Administrator shall send any objection it receives  
28 to Defendant’s Counsel and Class Counsel within three (3) business days of receipt. Class Counsel

1 shall file any objections and the Parties' responses thereto with the Court with the motion for final  
2 approval. The Court retains final authority with respect to the consideration and admissibility of  
3 any Settlement Class member objections. All Class Members who do not submit timely written  
4 objections to the Settlement hereby waive any and all rights to appeal from the Final Approval Order.

5 If a Settlement Class Member objects to the Settlement, the Settlement Class member will  
6 remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement  
7 Class Member will be bound by the terms of the Settlement and Final Approval Order in the same  
8 way and to the same extent as a Settlement Class Member who does not object.

9 **C. Opportunity to be Excluded and Defendant's Opt-Out Threshold.**

10 In order for any Settlement Class Member to validly exclude himself or herself from the  
11 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion ("Request  
12 for Exclusion") must be completed and signed and dated by the Settlement Class Member or his or  
13 her authorized representative and must be sent to the Settlement Administrator, postmarked no later  
14 than forty five (45) days after the date the Settlement Administrator initially mails the Notice to the  
15 Settlement Class Members. A Request for Exclusion must state (1) the Class Member's name, (2) the  
16 Class Member's address, (3) the Class Member's telephone number, and (4) a clear statement that  
17 the Class Member "opts out" or otherwise requests exclusion from the Class and Settlement. The  
18 Notice shall contain instructions that the Request for Exclusion must be mailed and signed, the date  
19 by which it must be mailed, and also state the name and address of the Settlement Administrator.

20 The date of the initial mailing of the Notice, and the date the signed Request for Exclusion  
21 was postmarked, shall be conclusively determined according to the records of the Settlement  
22 Administrator. Any Settlement Class Member who timely and validly submits a Request for  
23 Exclusion from the Settlement Class and the Settlement will not be entitled to any portion of the Net  
24 Settlement Payments, will not be bound by the terms and conditions of the Settlement, and will not  
25 have any right to object, appeal, or comment thereon.

26 Any member of the Settlement Class who does not timely file and mail a Request for  
27 Exclusion from the Settlement Class will be deemed included in the Settlement Class in accordance  
28 with this Settlement.

1           Notwithstanding the foregoing, no Aggrieved Employee may exclude themselves from the  
2 Settlement of the PAGA claim asserted in the Litigation. In the event a Class Member submits both  
3 an objection and a Request for Exclusion, the Request for Exclusion will govern. The Settlement  
4 Administrator will provide Class Counsel and Defendant's Counsel with a list of all those individuals  
5 who have submitted Requests for Exclusion within sixty days of the date of mailing of the Notice,  
6 to be supplemented as necessary. In the event that five percent (5%) or more of the Class Members  
7 exercise their right to exclude themselves and opt out of the Settlement and Settlement Agreement,  
8 Defendant retains the exclusive right, but not the obligation, to withdraw from and terminate the  
9 Settlement and the Settlement Agreement and return all parties back to their same position before  
10 the Settlement was reached and the Settlement Agreement was entered into. In the event that  
11 Defendant exercises such rights under this paragraph, this Agreement shall be null and void and  
12 Plaintiff and Defendant shall resume the Litigation through and until there is a final judgment in the  
13 Litigation. Defendant must notify Class Counsel and the Court of such a decision to withdraw and  
14 terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing.  
15 In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the  
16 Settlement for any reason, and the Parties shall split equally all administration expenses incurred  
17 through the date of the termination of the Settlement.

18           **D. Cooperation**

19           The Parties and their respective counsel agree not to encourage members of the Settlement  
20 Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the  
21 Settlement, directly or indirectly, through any means. However, if a Settlement Class Member  
22 contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement  
23 Class Member's options.

24           **X. DISPUTES PROCEDURE**

25           Named Plaintiff and Defendant have agreed upon the following procedure to resolve all  
26 disputes submitted by Settlement Class Members during the Settlement Period.

27           If a member of the Settlement Class disputes the number of Eligible Workweeks set forth in  
28 the Notice, such person must follow the directions in the Notice, including preparing a statement

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1 setting forth the number of Eligible Workweeks that such person believes in good faith is correct,  
2 and stating that the member of the Settlement Class authorizes the Settlement Administrator to  
3 request information from Defendant to determine such information, and attaching any supporting  
4 documentation. The member of the Settlement Class must mail the signed and completed statement  
5 no later than forty-five (45) days after the date of the mailing of the Notice, or the number of Eligible  
6 Workweeks set forth in the Notice will govern the Net Settlement Payment to the member of the  
7 Settlement Class.

8           Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with  
9 Class Counsel and counsel for Defendant, will work with counsel in good faith to resolve it. After  
10 consulting with Class Counsel and counsel for Defendant, the Settlement Administrator shall  
11 compute the number of Eligible Workweeks to be used in computing the Settlement Class member’s  
12 pro rata share of the Net Settlement Amount. In the event there is a disparity between the dates a  
13 Settlement Class member claims he or she worked during the Settlement Period and the dates  
14 indicated by Defendant’s records, Defendant’s records will control unless inconsistent with  
15 supporting documentation (e.g., paycheck stub(s) (or bona fide copies thereof)) provided by the  
16 Settlement Class member, in which case the supporting documentation will control. The Settlement  
17 Administrator’s decision as to the total number of Eligible Workweeks shall be final and non-  
18 appealable. The Settlement Administrator shall send written notice of the decision on any such claim  
19 to the Settlement Class Member, to Class Counsel, and counsel for Defendant.

20 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

21 **A. Distribution Formula.**

22           Members of the Settlement Class not opting out will receive a lump sum payment as good  
23 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,  
24 in an amount determined by the Settlement Administrator in accordance with the provisions of this  
25 Agreement.

26           The lump sum payment to each member of the Settlement Class not excluding him/ herself  
27 will be determined in accordance with the procedure set forth below.

28           The Settlement Administrator will calculate the total number of workweeks for all Class

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1 Members who were employed by Defendant during the Settlement Period based on their dates of  
2 employment during the Settlement Period (“Total Workweeks”). The value of each Workweek shall  
3 be determined by the Settlement Administrator by dividing the Net Settlement Fund by the total  
4 number of Workweeks worked by all Class Members who do not opt out in accordance with Section  
5 IX(C) above during the Settlement Period (“Workweek Point Value”).

6 A “Net Settlement Payment” for each Class Member will then be determined by multiplying  
7 a Class Member's workweeks worked during the Settlement Period (“Eligible Workweeks”) by the  
8 Workweek Point Value. The Net Settlement Payment will be reduced by any required legal  
9 deductions, for each participating Class Member.

10 **B. Funding of Settlement.**

11 No later than 7 calendar days after the date the Court’s Final Approval Order becomes  
12 “Final”, Defendant will deposit the Settlement Amount and the Employer Taxes into an account  
13 established by the Settlement Administrator either directly or by sending the funds to the Settlement  
14 Administrator to be deposited and distributed. All of Defendant’s obligations under this Settlement  
15 are deemed to be satisfied upon Defendant’s timely deposit of the Settlement Amount and Employer  
16 Taxes and acknowledgement of receipt of said funds and Defendant shall have no further obligations  
17 to the Settlement Class including, without limitation, any further obligations to make any other  
18 payments of any kind to, or on behalf of, the Settlement Class.

19 **C. Potential Increase in Funding**

20 Defendant represents that there are approximately 53,000 Total Workweeks at issue for the  
21 Settlement Class Members. In the event the number of Total Workweeks worked by the Settlement  
22 Class Members increases by more than 10%, or 5,300 Workweeks, then the Settlement Amount shall  
23 be increased proportionally by the Total Workweeks in the Settlement Period in excess of 58,300  
24 multiplied by \$25.94. The Settlement Amount will not be reduced due to Defendant’s estimate that  
25 there are approximately 53,000 Total Workweeks at issue for the Settlement Class Members.

26 **D. Time for Distribution.**

27 The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net  
28 Settlement Payments, the Court approved attorney’s fees and Litigation costs, Court approved

1 enhancement to Named Plaintiff, Administrative Costs, and PAGA Settlement) to be distributed  
2 within twenty-one (21) calendar days following the funding of the Settlement Amount.

3 If a Class Member check is returned to the Settlement Administrator as undeliverable, the  
4 Settlement Administrator shall promptly attempt to obtain a valid mailing address by  
5 performing a skip trace search and, if another address is identified, shall mail the check  
6 to the newly identified address. Any settlement checks remaining uncashed after one  
7 hundred and eighty (180) days shall be deemed unpaid residue pursuant to Code of Civil  
8 Procedure Section 384(a) and shall be paid to Legal Aid at Work at 180 Montgomery  
9 Street, Suite 600, San Francisco, CA 94104. Pursuant to Code of Civil Procedure section  
10 384, the Court shall set a compliance hearing no earlier than one year following the Date  
11 of Final Approval. No later than five (5) court days before the hearing, the Parties shall  
12 file a report with the Court specifying the total amount paid to Class Members, and the  
13 residual of unclaimed funds that will be disbursed *cy pres*, along with a proposed  
14 amended judgment

15 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

16 The amounts paid under this Agreement do not represent a modification of any previously  
17 credited hours of service under any employee benefit plan, policy, or bonus program sponsored by  
18 Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or  
19 any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant,  
20 policies or bonus programs. Any payments made under the terms of this Settlement shall not be  
21 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other  
22 form of compensation for the purposes of Defendant’s benefit plan, policy or bonus program.  
23 Defendant retains the right to modify the language of its benefit plans, policies and bonus programs  
24 to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for  
25 “hours worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by  
26 applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or  
27 any other purpose, and that additional contributions or benefits are not required by this Settlement.

28 ///

1 **XIII. CLASS COUNSEL’S ATTORNEYS’ FEES AND LITIGATION COSTS**

2 Class Counsel shall make a separate motion or submit an application, at their election, for an  
 3 award of reasonable attorneys’ fees. Defendant shall not oppose a request by Class Counsel for, and  
 4 Class Counsel shall not seek or receive an amount in excess of \$458,333.33, which represents 33  
 5 1/3% of the Settlement Amount for all past and future attorneys’ fees necessary to prosecute, settle  
 6 and administer the Litigation and this Settlement.

7 Additionally, Class Counsel shall submit an application for actual Litigation costs incurred  
 8 and necessary to prosecute, settle and administer the Litigation and this Settlement, in an amount not  
 9 to exceed \$25,000, which Defendant shall not oppose. Any attorneys’ fees or Litigation costs  
 10 awarded to Class Counsel by the Court as part of the Settlement Amount shall be deducted from the  
 11 Settlement Amount for the purpose of determining the Net Settlement Amount, and shall not be paid  
 12 in addition to the Settlement Amount. The “future” aspect of these amounts include, without  
 13 limitation, all time and expenses expended by Class Counsel in defending the Settlement and  
 14 securing preliminary and Final Approval (including any appeals therein). There will be no additional  
 15 charge of any kind to either the members of the Settlement Class or request for additional  
 16 consideration from Defendant for such work. This amount shall include all attorneys’ fees, Litigation  
 17 costs, and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory  
 18 whatsoever.

19 Within twenty-one (21) calendar days following the funding of the Settlement Amount, the  
 20 Settlement Administrator shall disburse payment from the Settlement Amount for the amount of  
 21 attorneys’ fees and Litigation costs approved by the Court to Class Counsel. Should the Court  
 22 approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class  
 23 Counsel ultimately seeks, then any such unapproved portion or portions shall revert to the Net  
 24 Settlement Amount. For purposes of settling this matter only, Defendant agrees that Wilshire Law  
 25 Firm PLC is adequate Class Counsel.

26 **XIV. ENHANCEMENT TO NAMED PLAINTIFF**

27 Defendant shall not oppose an application by Named Plaintiff and Named Plaintiff shall not  
 28 seek or receive an amount in excess of \$10,000.00 for his participation in and assistance with the

1 Litigation (*i.e.*, Named Plaintiff’s class representative enhancement/service award). Any  
2 enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be  
3 deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount  
4 and shall not be paid in addition to the Settlement Amount. The enhancement shall be reported on  
5 an IRS Form 1099. If the Court approves an enhancement of less than \$10,000.00 to Named Plaintiff,  
6 then the unapproved portion or portions shall revert to the Net Settlement Amount. For purposes of  
7 settling this matter only, Defendant agrees that Plaintiff Darrell Colter should be deemed adequate  
8 to represent the Class.

9 Although it is the contemplation of the Parties that the enhancement represents payment to  
10 Named Plaintiff for service to the Settlement Class and does not represent wages, the Internal  
11 Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the  
12 position that some or all of the enhancement constitutes wages for income tax and withholding  
13 purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service,  
14 the California Franchise Tax Board, and any other relevant taxing authority the amounts required by  
15 law, if any, to be withheld by Defendant from the enhancement paid under this Settlement. In  
16 addition, Plaintiff shall hold Defendant, Released Parties, Class Counsel, and the Settlement  
17 Administrator harmless for any taxes, interest, penalties, other payments and costs, incurred by  
18 reason of any valid claims by taxing authorities relating to Plaintiff’s alleged failure to pay any owed  
19 taxes.

## 20 **XV. TAXATION AND ALLOCATION**

21 The Parties agree that all employment taxes and other legally required withholdings will be  
22 withheld from payments to the members of the Settlement Class and Named Plaintiff based on the  
23 Parties’ stipulated allocation of the Net Settlement Amount as provided for in this Section.

24 For withholding tax characterization purposes and payment of taxes, the Net Settlement  
25 Payments shall be allocated by the Parties as follows (“Net Settlement Allocation”):

- 26 (1) 10% as wages;
- 27 (2) 45% as penalties; and
- 28 (2) 45% as interest.



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1 The amounts paid as wages shall be subject to all tax withholdings customarily made from  
2 an employee’s wages and all other authorized and required withholdings and shall be reported by W-  
3 2 forms. The employer-side taxes (including employer’s portion of FICA, FUTA, SUTA, and all  
4 other applicable payroll taxes) will be paid by Defendant separate from and in addition to the  
5 Settlement Amount, as calculated by the Settlement Administrator. The amounts paid as penalties  
6 and interest shall be subject to all authorized and required withholdings other than the tax  
7 withholdings customarily made from employees’ wages and shall be reported by IRS 1099 forms.  
8 Defendant shall not make as part of this Settlement, nor be required to make, any deductions, nor  
9 pay any monthly contributions for any insurance, retirement, 401(k) or profit-sharing plans, or any  
10 benefit plans related to monies paid as a result of this Settlement.

11 The Parties and counsel for the Parties make no representation as to the tax treatment or legal  
12 effect of the payments called for under this Settlement. Named Plaintiff and Class Members are  
13 solely responsible for any and all tax obligations related to such payments. In addition, Class  
14 Members and Aggrieved Employees shall hold Defendant, Released Parties, Class Counsel, and the  
15 Settlement Administrator harmless from and against any claims for taxes, interest, penalties, other  
16 payments and costs by taxing authorities relating to Class Members’ and/or Aggrieved Employees’  
17 alleged failure to pay any taxes owed by virtue of payments made pursuant to this Agreement.

18 **XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

19 In order to implement the terms of this Settlement and to settle claims alleged under the  
20 Private Attorneys General Act of 2004, California *Labor Code* section 2698 *et seq.*, the Parties agree  
21 to allocate \$50,000.00 from the Settlement Amount, not in addition to the Settlement Amount, as  
22 civil penalties as a fair and reasonable settlement of this claim. Seventy-five percent (75%) of this  
23 PAGA Settlement will be paid to the Labor and Workforce Development Agency (“LWDA  
24 Payment”) and 25% of this amount will be distributed to the Aggrieved Employees (“Net PAGA  
25 Amount”), through the Settlement Administrator and at no additional cost to Defendant. The Court’s  
26 adjustment, if any, of the amount allocated to the PAGA claim will not invalidate this Settlement.

27 The Parties agree that, as to the PAGA claim, no Class Member or Aggrieved Employee can  
28 exclude themselves from that portion of the Settlement and that, absent an order granting leave to

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1 intervene in the Litigation, no individual has standing to object to the Settlement of the PAGA Claim.  
2 Any Class Member who is also an Aggrieved Employee, i.e. was employed in a non-exempt position  
3 in California during the PAGA Period, and requests exclusion from the Class will still receive their  
4 portion of the Net PAGA Amount.

5 Class Counsel will submit a copy of this Settlement and the motions for approval to the  
6 LWDA, as required by Labor Code section 2699(1)(2). Class Counsel will attach a copy of the  
7 confirmation of submission to the LWDA as an exhibit to their motion for preliminary approval and  
8 will submit a copy of the Final Approval Order and Judgment to the LWDA within 10 days of its  
9 entry, as required by Labor Code section 2699(1)(3). Within twenty-one (21) calendar days following  
10 the funding of the Settlement Amount, the Settlement Administrator shall disburse the PAGA  
11 Settlement to the California Labor and Workforce Development Agency (“LWDA”). The Net PAGA  
12 Amount shall be divided and paid to all Aggrieved Employees (including those Class Members who  
13 have objected or opted out of the class settlement) in proportion to their respective number of Eligible  
14 Workweeks in the PAGA Claim Period. Each Aggrieved Employee’s share of the 25% portion of  
15 the Net PAGA Amount will be determined by dividing their total weeks worked within the PAGA  
16 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.  
17 That fraction will then be multiplied by the 25% portion of the Net PAGA Amount to arrive at the  
18 Aggrieved Employee’s individual share. These payments to Aggrieved Employees shall be allocated  
19 as 100% penalties. Aggrieved Employees will be responsible for paying any personal income taxes  
20 owed on the amounts they received.

21 **XVII. COURT APPROVAL**

22 This Agreement and the Settlement is contingent upon Final Approval by the Court and the  
23 entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably  
24 necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent  
25 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other  
26 in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.  
27 Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of  
28 the Settlement or assist or encourage any person or entity to file any such objection.

1 In the event the Parties are unable to secure Court approval of the Settlement, the Parties shall  
2 be restored to their respective positions in the Litigation, as of the date of the hearing on the Motion  
3 for Preliminary Approval, except as otherwise provided in Section XVIII below, and the Parties shall  
4 split equally all administration expenses incurred through that date.

5 **XVIII. MISCELLANEOUS PROVISIONS**

6 **A. Stay of Litigation.**

7 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending  
8 Final Approval of the Settlement by the Court.

9 **B. Interpretation of the Agreement.**

10 This Agreement constitutes the entire agreement between Named Plaintiff and Defendant.  
11 Except as expressly provided herein, this Agreement has not been executed in reliance upon any  
12 other written or oral representations or terms, and no such extrinsic oral or written representations or  
13 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree  
14 that this Agreement is to be construed according to its terms and may not be varied or contradicted  
15 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State  
16 of California, both in its procedural and substantive aspects, without regard to its conflict of laws  
17 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will  
18 be resolved solely and exclusively in the Superior Court of the State of California for the County of  
19 San Diego, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the  
20 Court over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf  
21 of the Settlement Class and Aggrieved Employees, and Defendant participated in the negotiation and  
22 drafting of this Agreement and had available to them the advice and assistance of independent  
23 counsel. As such, neither Named Plaintiff nor Defendant may claim that any ambiguity in this  
24 Agreement should be construed against the other.

25 The terms and conditions of this Agreement constitute the exclusive and final understanding  
26 and expression of all agreements between Named Plaintiff and Defendant with respect to the  
27 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the  
28 original signatories and approved by the Court.

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1           **C. Further Cooperation.**

2           Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to  
3 prepare and execute all documents, to seek the necessary approvals from the Court, and to do all  
4 things reasonably necessary or convenient to consummate the Agreement as expeditiously as  
5 possible.

6           **D. Confidentiality of Documents.**

7           The terms of this Settlement shall remain confidential until the motion for preliminary  
8 approval is filed. Except for communications between Class Counsel and Class Members, Named  
9 Plaintiff and Class Counsel agree not to make any public statements, issue any pressure releases,  
10 place information regarding this settlement on their web site, or make any other announcements  
11 publicizing this settlement. After the expiration of any appeals period, Named Plaintiff, the  
12 Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents,  
13 declarations and other information obtained in the lawsuit, unless necessary for appeal or such  
14 documents are ordered to be disclosed by the Court or by a subpoena.

15           **E. Counterparts.**

16           The Agreement may be executed in one or more actual or non-original counterparts, all of  
17 which will be considered one and the same instrument and all of which will be considered duplicate  
18 originals.

19           **F. Authority.**

20           Each individual signing below warrants that he or she has the authority to execute this  
21 Agreement on behalf of the party for whom or which that individual signs.

22           **G. Assignment**

23           None of the rights, commitments, or obligations recognized under this Settlement may be  
24 assigned by any Party, Class Member, Class Counsel, or Defendant’s Counsel without the express  
25 written consent of each other Party and their respective counsel. The representations, warranties,  
26 covenants, and agreements contained in this Settlement are for the sole benefit of the Parties under  
27 this Settlement, and shall not be construed to confer any right or to avail any remedy to any other  
28 person.

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1           **H.       Modification.**

2           This Agreement may not be changed, altered, or modified, except in a writing signed by the  
3 Parties, and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates  
4 contained in this Agreement may be modified by agreement of the Parties in writing without Court  
5 approval if the Parties agree and cause exists for such modification. This Agreement may not be  
6 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

7           **I.       Deadlines Falling on Weekends or Holidays.**

8           To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or  
9 legal holiday, that deadline shall be continued until the following business day.

10          **J.       Fees and Costs.** With the exception of fees and costs to be paid from the Settlement  
11 Amount, all Parties are to bear their own fees and costs.

12          **K.       Severability.**

13          In the event that any one or more of the provisions contained in this Agreement shall for any  
14 reason be held invalid, illegal, or unenforceable in any respect, or not approved, such invalidity,  
15 illegality, unenforceability, or non-approval shall in no way affect any other provision if Defendant’s  
16 Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in  
17 writing to proceed as if such invalid, illegal, unenforceable, or unapproved provision had never been  
18 included in this Agreement. If the Parties do not elect to proceed, the Parties shall be restored to their  
19 respective positions in the Litigation, as of the date of the hearing on the Motion for Preliminary  
20 Approval.

21          **L.       Agreement Binding on Successors**

22          This Agreement will be binding upon, and inure to the benefit of, the successors in interest  
23 of each of the Parties.

24          **M.       Fair, Adequate, and Reasonable Settlement.**

25          The Parties and their respective counsel believe and warrant that this Agreement reflects a  
26 fair, reasonable, and adequate settlement of the Litigation and have arrived at this Agreement through  
27 arms-length negotiations, taking into account all relevant factors, current and potential.  
28

1 APPROVED AS TO FORM AND CONTENT:

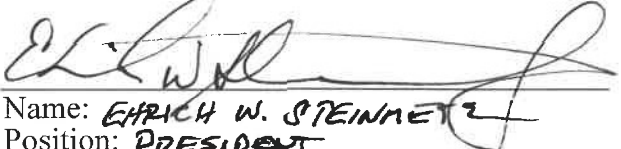
2 Date: 4/27/2022, 2022

DARRELL COLTER, on behalf of himself and  
all others similarly situated

3  
4 By:  DocuSigned by:  
5 DARRELL COLTER, Plaintiff

6  
7  
8 Date: April 27, 2022

PROPULSION CONTROLS ENGINEERING,  
LLC, *Defendant*

9  
10 By:   
11 Name: ERICH W. STEINMETZ  
12 Position: PRESIDENT  
For PROPULSION CONTROLS  
ENGINEERING, LLC, *Defendant*

13 APPROVED AS TO FORM:

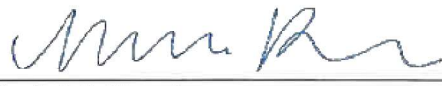
14  
15 Date: April 28, 2022

WILSHIRE LAW FIRM

16  
17 By:   
18 Justin F. Marquez, Esq.  
Benjamin H. Haber, Esq.  
*Attorneys for Plaintiff*

19  
20 Date: April 27, 2022

WILSON TURNER KOSMO LLP

21  
22 By:   
Lois M. Kosch  
Nicole R. Roysdon  
*Attorneys for Defendant*

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