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21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 KYLE JENSEN, an individual;
24 CHRISTOPHER BEATTY, an
25 individual; for themselves and those
26 similarly situated,

27 Plaintiffs,

28 v.

SECORP INDUSTRIES, a Louisiana
partnership; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 2:19-cv-07980-MWF-(SKx)

COLLECTIVE ACTION

**JOINT STIPULATION OF CLASS
AND COLLECTIVE ACTION
SETTLEMENT, PAGA
SETTLEMENT AND RELEASE**

1 This Joint Stipulation of Class and Collective Action Settlement, PAGA
2 Settlement and Release (“Stipulation of Settlement” or “Settlement Agreement”) is made
3 by and between Plaintiffs Kyle Jensen, Christopher Beatty (“Plaintiffs”), individually and
4 on behalf of all others similarly situated, and Defendant Secorp Industries (“Defendant”),
5 and their respective counsel of record, subject to the terms and conditions herein and the
6 Court’s approval. This Settlement Agreement is intended to fully, finally, and forever
7 compromise, release, resolve, discharge, and settle the released claims subject to the
8 terms and conditions set forth in this Settlement Agreement. Upon final approval of this
9 Settlement Agreement by the Court, and any related motions, the instant action shall be
10 dismissed in its entirety with prejudice.

11 **I. DEFINITIONS**

12 As used in this Settlement Agreement, the following terms have the meanings
13 specified below:

14 1. “Action” or “Lawsuit” means the case entitled *Kyle Jensen, et al. v. Secorp*
15 *Industries*, pending in the United States District Court, Central District of California Case
16 No. 2:18-cv-02890-RGK-GJS (“*Jensen I*”), *Kyle Jensen, et al. v. Secorp Industries*,
17 pending in the United States District Court, Central District of California Case No. 2:19-
18 CV-07980-RGK-GJS (“*Jensen II*”) and the appeal pending in the Ninth Circuit Court of
19 Appeals (with respect to *Jensen I*) assigned to Case No. 19-56088 (collectively the
20 “Lawsuit”) on a class-wide basis.

21 2. “Administration Costs” means the actual and direct costs reasonably
22 charged by the Settlement Administrator, Phoenix Class Action Administration
23 Solutions, for its services in administering the Settlement, currently projected by the
24 Parties not to exceed Seven Thousand Nine Hundred Fifty Dollars (\$7,950.00).

25 3. “California Class” is defined as “all current and former hourly employees
26 of Defendant, who worked for Defendant on oil platforms on the Outer Continental Shelf
27 off the California coast for shifts of 12 hours or more during the California Class Period.
28 Members of the California Class are referred to herein as “California Class Members.”

1 The number of individuals in the California Class at the time of this MOU is
2 approximately 43 individuals.

3 4. “California Class Form” means the form notifying California Class
4 Members of their Individual Shifts and estimated Individual Settlement Payment in
5 substantially the form as **Exhibit 1**, attached hereto.

6 5. “California Class Notice” means the Court-approved form of notice to
7 Class Members, substantially in the form as **Exhibit 2**, attached hereto.

8 6. “California Shifts” is defined as periods of 12 consecutive hours or more
9 worked by members the California Class on oil platforms on the outer continental shelf
10 off the coast of California.

11 7. “California Class Period Shift Estimate” is defined as the number of
12 California Shifts between February 9, 2014 through the date of this settlement agreement
13 and was estimated to be 15,385 as of June 10, 2020.

14 8. “California Class Period” is the period beginning February 9, 2014 through
15 the date of Preliminary Approval.

16 9. “California Class Primary Fund” means the seventy percent (70%) of the
17 California Settlement Allocation that will be distributed to Settlement Class members
18 based on each participating Settlement Class member’s proportionate California Shifts
19 worked during the California Class Period.

20 10. “California Class Released Claims” means all claims, debts, liabilities,
21 demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages,
22 action or causes of action of whatever kind or nature, whether known or unknown,
23 contingent or accrued, that were alleged or that reasonably could have been alleged based
24 on the facts alleged in the Lawsuit, as amended, against the Released Parties or any of
25 them, for violation of the California Labor Code, the California Business & Professions
26 Code, the Labor Code Private Attorneys General Act of 2004, the applicable Industrial
27 Welfare Commission Wage Orders or any similar state or federal law, including, but not
28 limited to, any claims for unpaid overtime, claims for missed meal or rest breaks, claims

1 for meal or rest break premiums, claims for unreimbursed employee business expenses,
2 claims for liquidated damages, claims for unlawful deductions from wages, claims for
3 conversion of wages, claims for record-keeping violations, wage-statement penalties,
4 “waiting time” penalties, claims for unpaid wages, claims for failure to pay minimum
5 wage, and any claims under California Labor Code sections 201, 202, 203, 204, 210, 218,
6 218.5, 218.6, 219, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
7 1197, 1197.1, 1198, 2802, 2802(c), 2810.5 and Labor Code section 2698 et seq. based on
8 alleged violations of these Labor Code provisions, as well as claims under California
9 Code of Civil Procedure section 1021.5, and California Civil Code sections 3288 and
10 3291, which arose at any time during the California Class Period, to the full extent
11 permitted by law. California Class Members releasing their claims under PAGA shall
12 release the above California Labor Code and other applicable California Class Released
13 Claims from the period beginning February 9, 2017 through the date of Preliminary
14 Approval.

15 11. “California Notice Packet” means the California Class Form (**Exhibit 1**),
16 California Class Notice (**Exhibit 2**), and Exclusion Letter (**Exhibit 3**).

17 12. “California Percentage Share” means each California Class Member’s
18 California Shifts divided by the California Total Shifts, as applicable.

19 13. “California Settlement Allocation” means the portion of the Net
20 Settlement Value allocated to the California Class (80% of the Net Settlement Amount).

21 14. “California Total Shifts” means the sum of all California Shifts for all
22 California Class Members.

23 15. “Claimants” means those California Class Members who do not submit an
24 Exclusion Letter and those FLSA Class Members who submit a timely FLSA Opt In
25 Form.

26 16. “Class” means collectively the California Class and FLSA Class.
27 Members of the Class are referred to herein as “Class Members.”
28

1 17. “Class Counsel” means Plaintiffs’ counsel, Michael A. Strauss, Aris E.
2 Karakalos, and Andrew C. Ellison of Strauss & Strauss, APC.

3 18. “Complaints” collectively mean the Second Amended Complaint, filed in
4 *Jensen I*, and the Complaint filed in *Jensen II*.

5 19. “Court” means the United States District Court for the Central District of
6 California.

7 20. “Defendant” means Defendant Secorp Industries.

8 21. “Defendant’s Counsel” means the law firm of Schickman Law.

9 22. “Exclusion Letter” means the Court-approved form, substantially in the
10 form as **Exhibit 3**, attached hereto, which California Class Members who wish to opt-out
11 must timely and fully complete and send to the Settlement Administrator. The Exclusion
12 Letter must be postmarked by the Objection/Exclusion Deadline and it must include the
13 California Class Member’s full name, the date, address, telephone number, last four digits
14 of his or her Social Security Number, and signature.

15 23. “Fee and Expense Award” means such award of fees and expenses as the
16 Court may authorize to be paid to Class Counsel for the services they have rendered and
17 will render to Plaintiffs and the Class in the Lawsuit. The Fee and Expense Award will
18 not exceed 35% of the Gross Settlement Value, which is Seventy Thousand Dollars
19 (\$70,000), plus Class Counsel’s actual out-of-pocket expenses in prosecuting this
20 Lawsuit, which will not exceed Ten Thousand Dollars (\$10,000.00).

21 24. “Final Approval” means that the Final Approval Order and Judgment have
22 been entered by the Court.

23 25. “Final Approval Order” means the Order Granting Final Approval of Class
24 Settlement, which shall be submitted with the motion for final approval.

25 26. “FLSA Class” means all participating FLSA Collective members who
26 consent to become party plaintiffs to the Fair Labor Standards Act collective action by
27 submitting a form so indicating. Twenty (20) percent of the Net Settlement Amount will
28 be allocated the FLSA Class.

1 27. “FLSA Class Period” is the period beginning September 13, 2016 through
2 the date of Preliminary Approval.

3 28. “FLSA Collective” is defined as “Each and every current and former
4 hourly employee, who, at any time between September 13, 2016 and the date of
5 preliminary approval, worked a multi-day hitch on an oil platform on the Outer
6 Continental Shelf off any coast of the United States.” The number of individuals in the
7 FLSA Collective at the time of this MOU is approximately 50 individuals.

8 29. “FLSA Collective Form” means the form notifying FLSA Collective
9 members of their Individual Shifts and estimated Individual Settlement Payment in
10 substantially the same form attached as **Exhibit 4**.

11 30. “FLSA Collective Action Notice” means the Court-approved form of
12 notice to FLSA Class Members, substantially in the form as **Exhibit 5**, attached hereto.

13 31. “FLSA Shifts” is defined as the number of overnights spent (adding one
14 12-hour shift per multiday hitch) by members the FLSA Collective on oil platforms on
15 the outer continental shelf off the coast of the United States.

16 32. “FLSA Collective Shifts Estimate” is defined as the number of FLSA
17 shifts between September 13, 2016 and the date of preliminary approval and was
18 estimated to be 9,288 as of June 10, 2020.

19 33. “FLSA Class Released Claims” means all claims, debts, liabilities,
20 demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages,
21 action or causes of action of whatever kind or nature, whether known or unknown,
22 contingent or accrued, that were alleged or that reasonably could have been alleged based
23 on the facts alleged in the Lawsuit, as amended, against the Released Parties or any of
24 them, for violations of the Fair Labor Standards Act, 29 U.S.C. section 201 et seq. and
25 the corresponding Department of Labor Regulations, 29 C.F.R. section 785 et seq. and
26 778 et seq., including, but not limited to, any claims for unpaid wages, economic
27 damages, non-economic damages, liquidated damages, punitive damages, restitution,
28 penalties, other monies, or other relief arising out of, relating to, or in connection with

1 any facts and/or claims pled in the Lawsuit, which are or could be the basis of claims that
2 Defendant failed to provide all wages and overtime wages due, failed to provide meal or
3 rest breaks, failed to reimburse expenses, failed to pay the minimum wage and/or engaged
4 in recordkeeping violations, at any time during the FLSA Class Period.

5 34. “FLSA Opt In Form” means a proof of claim and release, and consent to
6 join in substantially the form as **Exhibit 6**, attached hereto.

7 35. “FLSA Collective Form” means the form notifying FLSA Class Members
8 of their Individual Shifts and estimated Individual Settlement Payment in substantially
9 the form as **Exhibit 4**, attached hereto.

10 36. “FLSA Percentage Share” means each FLSA Class Member’s Individual
11 Shifts divided by the FLSA Total Shifts, as applicable.

12 37. “FLSA Settlement Allocation” means the portion of the Net Settlement
13 Value allocated to the FLSA Class.

14 38. “FLSA Total Shifts” means the sum of all Individual Shifts for all FLSA
15 Collective Members.

16 39. “Gross Settlement Value” means the maximum amount of Two Hundred
17 Thousand Dollars (\$200,000.00) that Defendant shall pay because of this Stipulation of
18 Settlement. This amount will not, however, include the employer’s share of Payroll
19 Taxes, as defined below. This amount is also subject to increase pursuant to the Escalator
20 Clause set forth below. The amounts listed in this paragraph shall be the total amount for
21 which defendant will be liable under any aspect of this Agreement or settlement.

22 40. The Gross Settlement Value will be used to cover all payments to or for
23 Plaintiffs, Claimants, Class Counsel, the Labor and Workforce Development Agency, the
24 Settlement Administrator, any Cy Pres payments approved by the Court, and any other
25 payments approved herein

26 41. “Individual Settlement Payment” means the portion of the Net Settlement
27 Value distributable to each Claimant.

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1 42. “Individual Shifts” means periods of 12 hours or more spent working on
2 oil platforms for each Class Member as reflected by Defendant’s corporate and business
3 records, during the applicable class period. Approximations and averages will be used
4 where data is missing or otherwise not available.

5 43. “Judgment” means the form of Judgment entered by the Court which shall
6 be submitted with the motion for final approval.

7 44. “Mediator” means Circuit Mediator for the Ninth Circuit Court of Appeals,
8 Sasha M. Cummings.

9 45. “Net Settlement Value” means the Gross Settlement Value less the Fee and
10 Expense Awards, the two Service Awards, 75% of the Private Attorneys General Act of
11 2004 (“PAGA”) Payment to be delivered to the LWDA, and Administration Costs, as
12 approved and awarded by the Court. At this time, the Net Settlement Value is estimated
13 to be \$99,050.00. Twenty (20) percent of the Net Settlement Amount will be allocated
14 to pay participating members of the FLSA Class. Eighty (80) percent of the Net
15 Settlement Amount will be allocated to pay participating members of the California
16 Class. The California Class Primary fund (consisting of 70% of the California Settlement
17 Allocation) will be distributed to Settlement Class members based on each participating
18 Settlement Class member’s proportionate SHIFTS worked during the Class Period as
19 defined above. Twenty percent (20%) of the California Settlement Allocation will be
20 distributed to the Waiting Time Subclass. Ten percent (10%) of the California Settlement
21 Allocation will be allocated to the Wage Statement and PAGA Subclass.

22 46. “Notice Packet” means the Notice, California Class Form and FLSA Opt
23 In Form, as applicable.

24 47. “Notice Period” means the forty-five (45) day period following the date on
25 which the Settlement Administrator first mails the Notice Packet to the Class Members.

26 48. “Objection/Exclusion Deadline” means the date forty-five (45) days
27 following the date on which the Settlement Administrator first mails the Notice Packet to
28 the Class Members.

1 49. “Opt In Deadline” means the date forty-five (45) days following the date
2 on which the Settlement Administrator first mails the Notice Packet to the FLSA
3 Collective Members.

4 50. “PAGA Payment” means the sum of Four Thousand Dollars
5 (\$4,000.00)(2% of the Gross Settlement Amount), which shall be allocated from the
6 Gross Settlement Value to pay all applicable penalties under PAGA to the Labor and
7 Workforce Development Agency (“LWDA”). 75% of the PAGA Payment shall be paid
8 to the LWDA (i.e., \$3,000.00) (“PAGA LWDA Payment”), and 25% of the PAGA
9 Payment (i.e., \$1,000.00) (“PAGA Class Payment”) shall be paid to the California Class
10 Members who worked between February 9, 2017 and the date of preliminary approval.
11 Plaintiffs will submit this Settlement Agreement and proposed settlement to the LWDA
12 as required by Labor Code Section 2699(1)(2) at the same time that it is submitted to the
13 Court for preliminary approval.

14 51. “Parties” means Plaintiffs, the California Class, the FLSA Class and
15 Defendant, collectively.

16 52. “Payment Obligation and Class Release Date” means after all of the
17 following events have occurred: (i) the Court has finally approved the Settlement
18 Agreement and has signed and entered an Order so indicating; (ii) the Court has entered
19 an Approval Order dismissing this Action on the merits and with prejudice, with
20 continuing jurisdiction limited to enforcing the Settlement Agreement; and if any
21 objections have been filed, (iii) the time for appeal of the Approval Order has either run
22 without an appeal being filed or any appeal filed (including any requests for rehearing en
23 banc, petitions for certiorari, or appellate review) has been finally resolved and the
24 Court’s Approval has been upheld and (iv) Plaintiffs have dismissed and withdrawn
25 *Jensen I, Jensen II* and all appeals of either. Defendant will not pay any money until after
26 the Settlement Agreement is finally approved by the Court and the time for any appeal
27 (other than related to fees-costs or enhancements, which, as noted above, may be
28 separately appealed) related to the Settlement has expired, if any timely objections have

1 been filed, and Plaintiffs have dismissed their appeal in *Jensen I*. The parties agree that
2 payment shall not be due unless the Court grants Final approval of it, and not until 30
3 calendar days after the Settlement become effective following the Court’s granting of
4 Final Approval, or January 4, 2021, whichever is later.

5 53. “Payroll Taxes” means the employer’s portion of FICA, FUTA, and all
6 other state and federal payroll taxes (which are and shall be payable by Plaintiffs, the
7 California Class and the FLSA Class).

8 54. “Plaintiffs” means Kyle Jensen and Christopher Beatty.

9 55. “Preliminary Approval” means that the Court has entered an order
10 preliminarily approving the terms and conditions of this Stipulation of Settlement,
11 including the manner of providing notice to Class Members.

12 56. “Released Parties” means Defendant Secorp Industries, its past or present
13 successors and predecessors in interest, subsidiaries, affiliates, parents, officers, directors,
14 shareholders, employees, agents, principals, heirs, representatives, accountants, auditors,
15 consultants, insurers and reinsurers, and their respective successors and predecessors in
16 interest, subsidiaries, affiliates, parents and attorneys.

17 57. “Service Awards” means the sums paid to Plaintiffs Kyle Jensen and
18 Christopher Beatty in recognition of their efforts in obtaining the benefits of the
19 Settlement, which shall be allocated from the Gross Settlement Value. The Service
20 Awards shall not exceed \$6,000 to Plaintiff Jensen and \$4,000 to Plaintiff Beatty.

21 58. “Settlement” means the terms and conditions set forth in this Stipulation
22 of Settlement or Settlement Agreement.

23 59. “Settlement Administrator” means Phoenix Class Action Administration
24 Solutions, or a similar Class Action Administrator.

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1 60. “Waiting Time Amount”: Twenty Percent (20%) of the California
2 Settlement Allocation shall be designated as the “Waiting Time Amount” and distributed
3 to California Class members whose employment with Defendant ended prior to the date
4 of Preliminary Approval, based on each participating Settlement Class member’s
5 proportionate Shifts, as defined above, worked during the statutory period.

6 61. “Waiting Time Subclass” means California Class members whose
7 employment ended between February 9, 2015 and the date of preliminary approval.

8 62. “Wage Statement Amount”: Ten Percent (10%) of the California
9 Settlement Allocation shall be designated as the “Wage Statement Amount” and
10 distributed to California Class members based on each participating Settlement Class
11 member’s proportionate Shifts worked during the statutory period.

12 63. “Wage Statement and PAGA Subclass” means California Class members
13 who worked for Secorp from February 9, 2017 and the date of preliminary approval.

14 **II. THE INSTANT ACTION**

15 64. Plaintiff Kyle Jensen commenced this Lawsuit by filing, on February 9,
16 2018 a complaint against Defendant Secorp Industries which was removed to the United
17 States District Court for Central District of California, Case No. 2:18-cv-02890-RGK-
18 GJS (“*Jensen I*”) asserting claims under California law including overtime wages, failure
19 to provide lawful meal and rest periods, failure to reimburse business expenses, unfair
20 competition, and paystub violations. ECF No. 1. Plaintiff filed a First Amended
21 Complaint (“FAC”) on June 6, 2018, adding a claim for civil penalties under PAGA. ECF
22 No. 21. On June 13, 2018, by stipulation, the parties filed a Second Amended Complaint
23 (“SAC”) to correct the erroneously named Defendant entity ECF No. 23. By stipulation,
24 on September 14, 2018, the parties filed a Third Amended Complaint, (“TAC”) to add a
25 Plaintiff Beatty, and his claim for Waiting Time violations. ECF No. 46. The TAC was
26 dismissed. ECF No. 66. Plaintiffs’ appeal is pending in the Ninth Circuit Court of Appeals
27 assigned to Case No. 19-56088.

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1 65. Plaintiffs filed *Jensen II* on September 13, 2019, alleging violations of the
2 FLSA, assigned to case No. 2:19-CV-07980-RGK-GJS. The court dismissed that action
3 as to all claims arising prior to September 24, 2019, and before the Ninth Circuit could
4 consider any appeal from that dismissal the Parties reached a settlement of the Lawsuit.

5 66. In connection with this Settlement, the Parties agreed to stipulate to a
6 dismissal of *Jensen II* subject to reinstatement in the instance final approval of the
7 proposed settlement is not granted by the District Court. The Parties will concurrently
8 file a notice of settlement in *Jensen II*.

9 67. Defendant denies the allegations in the Complaint and has asserted several
10 meritorious affirmative defenses. Defendant expressly denies all charges of wrongdoing
11 or liability arising out of any of the acts, omissions, facts, matters, transactions, or
12 occurrences alleged, or that could have been alleged, in any of the Actions. Defendant
13 contends that, in compliance with applicable state and federal laws, current and former
14 hourly employees of Secorp Industries have been paid all wages due. Because Defendant
15 contends that it has complied with its obligations under federal and state laws, Defendant
16 contends that Plaintiffs' claims for unpaid wages and related and derivative claims,
17 including overtime wages, are meritless. Defendant also denies that the asserted claims
18 are appropriate for collective action treatment or class treatment under Fed. R. Civ. P. 23,
19 except pursuant to a settlement, due to the intractable management problems and issues
20 of individualized proof that would have been associated with a collective action and class-
21 wide trial.

22 68. Class Counsel has conducted an extensive investigation into the facts of
23 the class action and the Plaintiff and Class Members' claims, including through
24 depositions, paper discovery, informal disclosures between the Parties, and other
25 investigations undertaken by counsel for Plaintiff. Furthermore, the Parties engaged in
26 extensive negotiations and exchange of data, documents, information and mediation with
27 the Mediator. As a result, Class Counsel have concluded that the Settlement Agreement,
28 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known

1 facts and circumstances, including the likely damages, risk of significant delay, risk that
2 the Action would not proceed on a collective or class action basis, defenses asserted by
3 Defendant, and numerous potential appellate issues.

4 69. Defendant denies each and all the claims in this Action. Nevertheless,
5 Defendant has concluded that further conduct of the Action would be protracted and
6 expensive. Defendant, therefore, has determined that it is desirable and beneficial that
7 the Action be settled in the manner and upon the terms and conditions set forth in the
8 Settlement Agreement. Neither this Settlement Agreement, nor any document referred
9 to or contemplated herein, nor any action taken to carry out this Settlement Agreement,
10 is, may be construed as, or may be used as an admission, concession, or indication by or
11 against Defendant of any fault, wrongdoing or liability whatsoever.

12 **III. SETTLEMENT OF THE LAWSUIT AND ITS COMPONENTS**

13 70. Solely for settlement purposes, Plaintiffs agree to seek, and Defendant
14 consents to, certification by the Court of the FLSA Class as a collective action pursuant
15 to 29 U.S.C. § 216(b) and of the California Class as a class action pursuant to Fed. R.
16 Civ. P. 23. Should, for whatever reason, the Court not ultimately grant Final Approval,
17 the Parties' stipulation to collective and class certification as part of the Settlement shall
18 become null and void ab initio and shall have no bearing on, and shall not be admissible
19 in connection with, the issue of whether or not certification would be appropriate in a
20 non-settlement context. Defendant expressly reserves its right and declares that it intends
21 to oppose class certification vigorously should this Settlement not be granted Final
22 Approval. Also for settlement purposes only, Defendant will stipulate to the certification,
23 for the purpose of transmitting notice, of all claims in the Litigation that are subject to the
24 collective action requirements of 29 U.S.C. § 216(b), with the understanding that, in the
25 event the Court does not grant Final Approval of the settlement or the settlement does not
26 become Final, such stipulation and certification shall be null and void ab initio.

27 71. The Settlement in this Lawsuit shall have five components: (1) the
28 Individual Settlement Payments; (2) the Service Awards; (3) the Fee and Expense Award;

1 (4) the Administration Costs; and (5) the PAGA Payment. All these components are
2 included in the Gross Settlement Value and shall be deducted prior to the California
3 Settlement Allocation and FLSA Settlement Allocation.

4 a. **Payroll Taxes:** The Gross Settlement Value does not include the employer
5 portion of Payroll Taxes, which shall be paid by Defendant apart from the
6 Gross Settlement Value. The Payroll Taxes will be computed by the
7 Settlement Administrator based on the amounts paid to the Claimants, in
8 the manner set forth in Paragraph 55(c). The Settlement Administrator shall
9 be responsible for making all necessary payments and government filings
10 in connection with such payments.

11 b. **Calculation of the Individual Settlement Payments:** The Settlement
12 Administrator shall have the authority and obligation to calculate the
13 amounts of Individual Settlement Payments for each Class Member in
14 accordance with the methodology set forth in this Stipulation of Settlement
15 and orders of the Court. The Parties recognize and agree that the claims for
16 relief in the Lawsuit are extremely difficult to determine with any certainty
17 for any given year, or at all, and are subject to myriad differing calculations
18 and formulas. The Parties agree that the formula for allocating the
19 Individual Settlement Payments to Claimants provided herein is reasonable
20 and that the payments provided herein are designed to provide a fair
21 settlement to such persons, in light of the uncertainties of the compensation
22 alleged to be owed to the Class and the calculation of such amounts. It shall
23 be the responsibility of the Settlement Administrator to timely and properly
24 withhold from Individual Settlement Payments payable to Claimants all
25 applicable payroll and employment taxes, but not federal, state, and local
26 income taxes, and to prepare and deliver the necessary tax documentation
27 and, thereafter, to cause the appropriate deposits of withholding taxes and
28 informational and other tax return filing to occur.

1 Each Claimant's share of all applicable payroll and employment taxes
2 withheld and deposited with the applicable governmental authorities in
3 accordance with this Stipulation of Settlement shall be a part of, and paid
4 out of, the Individual Settlement Payment to each Claimant. Each Claimant
5 will be responsible for paying all applicable state, local, and federal income
6 taxes on all amounts the Claimant receives pursuant to this Stipulation of
7 Settlement.

8 The Parties have agreed that the Individual Settlement Payments will be
9 calculated based on the number of Individual shifts defined above, as
10 applicable. The Settlement Administrator shall have the authority and
11 obligation to calculate the number Individual Shifts for each Class Member
12 in accordance with this Stipulation of Settlement and orders of the Court.
13 Defendant will supply the Settlement Administrator with dates of
14 employment for each Class Member to calculate the Individual shifts for
15 each Class Member.

16 The Individual Settlement Payments for the Claimants in the FLSA and the
17 California Class will be calculated as follows:

- 18 *i.* Twenty (20) percent of the Net Settlement Amount will be allocated to
19 pay claims made by participating FLSA Class members.
- 20 *ii.* Eighty (80) percent of the Net Settlement Amount will be allocated to
21 pay participating members of the California Class.
- 22 *iii.* All FLSA Class members shall share the FLSA Class Allocation on a
23 pro rata basis, based on the number of FLSA Shifts each member worked
24 on an oil platform during the FLSA Period compared to FLSA Total
25 Shifts worked.
- 26 *iv.* The California Class Allocation shall be further divided between the
27 defined Class and two subclasses: (1) the Section 203 Subclass and (2)
28 the Section 226 and PAGA Subclass.

- v. The Section 203 Subclass shall share twenty (20) percent of the California Class Allocation on a pro rata basis, based on the number of Shifts each member worked on an oil platform during the Section 203 Subclass Period compared to all other Shifts worked on an oil platform by all other members of the Section 203 Subclass during that same period.
- vi. The Section 226 and PAGA Subclass shall share ten (10) percent of the California Class Allocation on a pro rata basis, based on the number of Shifts each member worked on an oil platform during the Section 226 and PAGA Subclass Period compared to all other Shifts worked by all other members of the Section 226 and PAGA Subclass during that same period.
- vii. The remaining seventy (70) percent of the California Class Allocation (the California Class Primary Fund) shall be divided between participating Class members on a pro rata basis, based on the number of Shifts each member worked on an oil platform during the Class Period compared to all other Shifts worked on an oil platform by all other members of the California Class during that same period.

The Parties further agree to request that the Settlement Administrator agree to indemnify Defendant for any security breach it suffers or causes relating to the personal information of Defendant's employees contained in data Defendant provides to the administrator for purposes of settlement administration.

c. **Characterization of and Taxes on Individual Settlement Payments:** The Individual Settlement Payments for the Claimants in the California Class will be allocated as follows:

- i. FLSA Settlement Allocation: 25% of each share shall be treated as interest and reported on an IRS 1099 form, and 75% shall be considered payment of wages and subject to the withholding of all

1 applicable local, state and federal taxes including payroll taxes,
2 and for which the Settlement Administrator will issue an IRS W-
3 2 form.

4 *ii.* California Settlement Allocation: The California Class Primary
5 Fund - 25% of each share shall be treated as interest and reported
6 on an IRS 1099 form, and 75% shall be considered payment of
7 wages and subject to the withholding of all applicable local, state
8 and federal taxes including payroll taxes, and for which the
9 Settlement Administrator will issue an IRS W-2 form. Wage
10 Statement Amount - Shares of the Wage Statement Amount will
11 be distributed to all members of the California Class and will be
12 treated as 100% penalties and reported on an IRS 1099 form.
13 Waiting time Amount - Shares of the Waiting Time Amount will
14 be distributed to all members of the California Class and will be
15 treated as 100% penalties and reported on an IRS 1099 form.
16 PAGA Class Payment Shares distributed to members of the PAGA
17 subclass will be treated as 100% penalties and reported on an IRS
18 1099 form.

19 **d. Allocation of Unclaimed Funds:** If there are unclaimed funds due to
20 FLSA Class Members not timely submitting opt-in forms, those unclaimed
21 funds shall be distributed on an equal basis to the FLSA Class Members
22 who did submit timely opt in forms at the time of the settlement is
23 distributed Any settlement checks that remain uncashed after 90 days will
24 be voided and, if the total amount of such unclaimed funds exceeds
25 \$20,000.00, their amounts will be allocated in a second allocation to
26 participating California Class members who cashed their initial checks.
27 Any second allocation checks not cashed after 90 days will be voided – or
28

1 any initially unclaimed funds, if the amount is \$20,000.00 or less – will be
2 allocated to the Legal Aid Foundation of Los Angeles (www.lafla.org).

3 e. **Service Awards:** Defendant agrees not to challenge Class Counsel’s
4 request for the Service Award to the Plaintiffs - \$6,000 to Kyle Jensen and
5 \$4,000 to Christopher Beatty. The Service Awards will be paid in addition
6 to Plaintiffs’ Individual Settlement Payment. Should the Service Award
7 approved by the Court be less than the amount sought, the difference shall
8 be added to the Net Settlement Value prior to the allocations to the
9 California Class and FLSA Class. An IRS Form 1099 will be issued to
10 Plaintiffs in connection with the Service Award. If the Court reduces or
11 does not approve the requested Service Award, Plaintiffs shall not have the
12 right to revoke the Settlement, and it shall remain binding.

13 f. **Class Counsel’s Fees and Costs:** Defendant agrees not to challenge Class
14 Counsel’s request for its Fee and Expense Award, which Class Counsel
15 shall seek by motion. Should the Fee and Expense Award approved by the
16 Court be less than the amount sought, the difference shall be added to the
17 Net Settlement Value prior to the allocations to the California Class and
18 FLSA Class. A Form 1099 will be issued to Class Counsel. Payment of
19 the Fee and Expense Award to Class Counsel shall constitute full
20 satisfaction of any obligation to pay any amounts to any person, attorney or
21 law firm for attorneys’ fees, expenses or costs in the Lawsuit incurred by
22 any attorney on behalf of Plaintiffs or the Class, and shall relieve Defendant
23 and Defendant’s Counsel of any other claims or liability to any other
24 attorney or law firm for any attorneys’ fees, expenses and/or costs to which
25 any of them may claim to be entitled on behalf of Plaintiffs and/or the Class.
26 Upon receipt of the Fee and Expense Award, Class Counsel, Plaintiffs and
27 the Class will be deemed to have released Defendant from any and all claims
28 for fees and costs resulting from the Lawsuit. If the Court reduces or does

1 not approve the requested Fee and Expense Award, Plaintiffs and Class
2 Counsel shall not have the right to revoke the Settlement, and the Settlement
3 will remain binding. The Gross Settlement Amount shall not cover
4 Defendant’s legal fees, costs or expenses incurred in the Lawsuit.
5 Except as provided herein, the Parties shall bear their own fees, costs,
6 and respective tax obligations.

7 g. **Escalator Clause:** Defendant represents that as of June 10, 2020 there were
8 an estimated 15,385 shifts (California Class) and 9,288 (FLSA Collective),
9 through the date of the MOU signed by the parties. If, at the time of
10 Preliminary Approval, the actual number of either groups of shifts through
11 the date of the MOU has increased by ten percent (10%) or more, then
12 Defendant shall increase the Gross Settlement Value equal to the percentage
13 increase in the actual number of shifts through the date of the MOU. For
14 example, if the actual number of Shifts by the California Class exceeds the
15 Class Period Shifts Estimate by 12 percent, the Gross Settlement Amount
16 shall increase by 12 percent.

17 h. **Prevailing Party Attorney’s Fees:** If any action is brought to enforce the
18 provisions of this agreement, or to defend a claim barred herein, the
19 prevailing party will be entitled to reasonable attorneys’ fees and costs.

20 **IV. LIMITED RELEASE BY THE CALIFORNIA CLASS**

21 72. As of the Payment Obligation and Class Release Date, the California Class
22 Members (other than those who submit an Exclusion Letter) will be deemed to have, and
23 by operation of the Final Approval Order and Judgment, will have, expressly waived and
24 released the Released Parties of the California Class Released Claims to the fullest extent
25 permitted by the law. California Class Members who do not opt out of the Settlement
26 will be bound by a limited release of claims under California Civil Code Section 1542,
27 which provides: “A *general release does not extend to claims that the creditor or*
28 *releasing party does not know or suspect to exist in his or her favor at the time of*

1 *executing the release and that, if known by him or her, would have materially affected*
2 *his or her settlement with the debtor or released party.”* The limited Section 1542 waiver
3 provided for herein releases solely claims against the Released Parties within the
4 definition of California Class Released Claims. To be clear, the scope of the Section
5 1542 waiver is limited to the California Class Released Claims only. The settlement
6 checks will include an endorsement confirming that by cashing the check, the California
7 Class Members are releasing the claims covered by the California Class Released Claims.
8 The Individual Settlement Payments shall be paid to California Class Claimants
9 specifically in exchange for the release of the Released Parties from the California Class
10 Released Claims and the covenant not to sue concerning the California Class Released
11 Claims.

12 **V. RELEASE BY THE FLSA CLASS**

13 73. As of the Payment Obligation and Class Release Date, the FLSA Class
14 Members who submit a timely and valid FLSA Opt In Form will fully release the FLSA
15 Class Released Claims and agree not to sue or otherwise make a claim against any of the
16 Released Parties for the FLSA Class Released Claims. The Individual Settlement
17 Payments shall be paid to FLSA Class Claimants specifically in exchange for the release
18 of the Released Parties from the FLSA Class Released Claims and the covenant not to
19 sue concerning the FLSA Class Released Claims.

20 74. FLSA Class Released Claims include any unknown claims that FLSA
21 Class Members do not know or suspect to exist in his or her favor, which if known by
22 him or her, might have affected this Settlement Agreement with Defendant and release
23 of Released Parties.

24 **VI. RELEASE OF ADDITIONAL CLAIMS & RIGHTS BY PLAINTIFFS**

25 75. **General Release By Plaintiffs.** As of the Payment Obligation and Class
26 Release Date, in consideration of the consideration set forth in this Settlement Agreement,
27 and the mutual covenants and promises set forth herein, Plaintiffs, for themselves and
28 their heirs, successors, and assigns, waives, releases, acquits, and forever discharges the

1 Released Parties from any and all claims, actions, charges, complaints, grievances, and
2 causes of action, to the fullest extent permitted by law, of whatever nature, whether
3 known or unknown, that arose, exist or may have existed on Plaintiffs' behalf as of , or
4 before, the date of full execution of this Settlement Agreement (i.e., the date that this
5 Settlement Agreement is signed by all of the signatories hereto), including but not limited
6 to any and all tort claims, contract claims, wage claims, wrongful-termination claims,
7 disability claims, benefit claims, public-policy claims, retaliation claims, statutory
8 claims, personal-injury claims, emotional-distress claims, invasion-of-privacy claims,
9 defamation claims, fraud claims, quantum meruit claims, and any and all claims arising
10 under any federal, state, or other governmental statute, law, regulation, or ordinance,
11 including but not limited to claims for violation of the Fair Labor Standards Act, the
12 California Labor Code, the Wage Orders of California's Industrial Welfare Commission,
13 other state wage-and-hour laws, the Americans with Disabilities Act, the Age
14 Discrimination in Employment Act ("ADEA"), the Employee Retirement Income
15 Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment
16 and Housing Act, the California Family Rights Act, the Family Medical Leave Act,
17 California's Whistleblower Protection Act, California Business & Professions Code
18 section 17200 et seq., and any and all claims arising under any federal, state, or other
19 governmental statute, law, regulation, or ordinance. Plaintiffs hereby expressly waives
20 and relinquishes any and all claims, rights, or benefits that he may have under California
21 Civil Code section 1542, which section provides as follows: "A general release does not
22 extend to claims that the creditor or releasing party does not know or suspect to exist in
23 his or her favor at the time of executing the release and that, if known by him or her,
24 would have materially affected his or her settlement with the debtor or released party."
25 Plaintiffs may hereafter discover claims or facts in addition to, or different from, those
26 which he now knows or believes to exist, but they expressly agree to fully and finally
27 settle and release any and all claims against the Released Parties, known or unknown,
28 suspected or unsuspected, that arose, exist or may have existed on behalf of, or against,

1 the other at or before the time of full execution of this Settlement Agreement (i.e., the
2 date that this Settlement Agreement is signed by all of the signatories hereto), including
3 but not limited to any and all claims relating to, or arising from, Plaintiffs' employment
4 with Defendant. It is Plaintiffs' intention to settle fully and release all of the claims he
5 now has or may have against the Released Parties, whether known or unknown, suspected
6 or unsuspected, which arose through the date of full execution of this Settlement
7 Agreement (i.e., the date that this Settlement Agreement is signed by all of the signatories
8 hereto). Plaintiffs further covenant not to sue any of the Released Parties for any claims
9 covered by this general release. The Parties further acknowledge, understand, and agree
10 that this representation and commitment are essential to the Settlement Agreement and
11 that this Settlement Agreement would not have been entered were it not for this
12 representation and commitment.

13 76. **ADEA Waiver by Plaintiffs.** Without limiting the scope of this
14 Settlement Agreement, Plaintiffs agree that this Settlement Agreement constitutes a
15 knowing and voluntary waiver of any and all rights or claims that exist or that Plaintiffs
16 may claim to have under the ADEA, as amended by the Older Workers' Benefit
17 Protection Act of 1990 (29 U.S.C. § 621 et seq.). Plaintiffs acknowledges all the
18 following:

- 19 a. The consideration provided pursuant to this Settlement Agreement is in
20 addition to any consideration that he would otherwise be entitled to
21 receive;
- 22 b. Plaintiffs have been and is advised in writing to consult with an attorney
23 prior to signing this Settlement Agreement;
- 24 c. Plaintiffs have been provided a full and ample opportunity to study this
25 Settlement Agreement, including a period of at least forty-five (45)
26 calendar days within which to consider it;
- 27 d. To the extent that Plaintiffs take fewer than forty-five (45) calendar days
28 to consider this Settlement Agreement prior to signing it, Plaintiffs

1 acknowledge that he had sufficient time to consider this Settlement
2 Agreement with legal counsel and that he expressly, voluntarily, and
3 knowingly waives the full forty-five (45) calendar-day period;

4 e. Plaintiffs agree that any changes made to the Settlement Agreement
5 during the forty-five (45) calendar-day period (whether material or
6 immaterial) do not restart the running of the forty-five (45) calendar-day
7 period; and

8 f. Plaintiffs are aware of his right to revoke this waiver of claims under the
9 ADEA any time within the seven (7) calendar-day period following the
10 date of full execution of this Settlement Agreement (i.e., the date that
11 this Settlement Agreement is signed by all of the signatories hereto) and
12 that the waiver of claims under the ADEA shall not become effective or
13 enforceable until the seven (7) calendar-day revocation-period expires.
14 Notwithstanding Plaintiffs' right to revoke the waiver of claims under
15 the ADEA, the remainder of the terms of this Settlement Agreement
16 shall become effective and enforceable as of the date of full execution
17 of this Settlement Agreement (i.e., the date that this Settlement
18 Agreement is signed by all of the signatories hereto).

19 To be effective, timely notice of revocation of the waiver of ADEA claims must
20 be made in writing and delivered to Defendant through its counsel, Mark Schickman,
21 Schickman Law, either by email to mark@schickmanlaw.com or by delivery to 1019
22 Euclid Avenue, Berkeley, Ca. 94708, no later than the seventh (7th) calendar day after
23 the date of full execution of this Settlement Agreement (i.e., the date that this Settlement
24 Agreement is signed by all of the signatories hereto). Each Plaintiff agrees to keep written
25 documentation proving that he revoked this Settlement Agreement as provided in this
26 paragraph, either by keeping the documents attesting to the delivery of the revocation, or
27 verification that the email was, in fact, received.

28 //

1 **VII. PRELIMINARY APPROVAL**

2 77. Plaintiffs will request that the Court set a hearing as soon as possible to
3 consider preliminary approval of the Settlement. In conjunction with such hearing, Class
4 Counsel shall submit this Stipulation of Settlement, together with the exhibits attached
5 hereto, and any other documents necessary to implement the Settlement.

6 78. Upon full execution of this Settlement Agreement, Class Counsel will draft
7 and file an unopposed motion for preliminary approval of a class and collective action
8 settlement within 21 calendar days, and will share their draft for comments by
9 Defendant’s Counsel with reasonable notice before filing (at least 7 calendar days).

10 **VIII. NOTICE AND CLAIM PROCESS**

11 79. **Settlement Administrator.** By accepting the role as Settlement
12 Administrator, the Settlement Administrator is bound to all the terms, conditions and
13 obligations described in this Settlement Agreement. Among other things, the Settlement
14 Administrator shall have sole and exclusive responsibility for: (a) calculating Individual
15 Shifts; (b) printing and mailing the Notice Packets to the Class Members as directed by
16 the Court; (c) setting up a toll-free number for the purpose of handling inquiries from
17 Class Members concerning the Notice; (d) receiving and reporting the objections,
18 Exclusion Letters, and FLSA Opt-In Forms; (e) deducting all legally required taxes from
19 Individual Settlement Payments; (f) processing and mailing the Individual Settlement
20 Payments; the Service Award; the Fee and Expense Award; and the PAGA Payment; (g)
21 distributing tax forms; (h) processing and mailing tax payments to the appropriate state
22 and federal taxing authorities; (i) providing declaration(s) as necessary in support of
23 preliminary and/or final approval of this Settlement; and (j) other tasks as the Parties
24 mutually agree or the Court orders to Settlement Administrator to perform. The
25 Settlement Administrator shall also be responsible for establishing a website (the address
26 to which will be provided on the Class Notice) where Class Members may review
27 conformed copies of the Complaint, Answer, Stipulation of Settlement, and any and all
28 moving papers submitted in support of or in conjunction with the Parties’ efforts to obtain

1 preliminary and final Court approval. The Settlement Administrator shall remove the
2 website no later than the earlier of (i) thirty (30) days after the final act performed by the
3 Settlement Administrator in connection with the Settlement, or (ii) the date on which the
4 Settlement Administrator is released by the Court.

5 80. Within fourteen (14) calendar days after entry of the order granting
6 Preliminary Approval, Defendant shall provide to the Settlement Administrator a list of
7 all Class Members, including their name, social security number, last known address,
8 telephone number, email address (if available), and employment date information to
9 enable the Settlement Administrator to calculate each Class Member's Individual Shifts.

10 81. Within twenty (20) calendar days after entry of the order granting
11 Preliminary Approval, the Settlement Administrator shall send the Notice Packet via first
12 class mail to all Class Members. Prior to the initial mailing, the Settlement Administrator
13 will check the addresses provided by Defendant through the National Change of Address
14 System.

15 82. If an original Notice Packet is returned as undeliverable with a forwarding
16 address provided by the United States Postal Service, the Settlement Administrator will
17 promptly resend a Notice Packet to that forwarding address, along with a brief letter for
18 FLSA Class Members stating that the recipient of the Notice Packet has until the original
19 deadline set forth on the Notice or seven (7) days after the re-mailing of the Notice Packet
20 (whichever is later) to submit a FLSA Opt In Form. If an original Notice Packet is
21 returned as undeliverable without a forwarding address, the Settlement Administrator will
22 make reasonable efforts to locate forwarding addresses, including a skip trace, and if it
23 obtains a more recent address, will resend a Notice Packet, along with a brief letter for
24 FLSA Collective Members stating that the recipient of the Notice Packet has until the
25 original deadline set forth on the Notice or seven (7) days after the re-mailing of the
26 Notice Packet (whichever is later) to submit a FLSA Opt In Form.

27 83. Every seven (7) days over the course of the forty-five (45) day Notice
28 Period, the Settlement Administrator shall send the following message to Class Members

1 via email: “Secorp Industries. has agreed to settlement terms with the representative of a
2 class of current and former hourly employees who worked for Defendant on oil platforms
3 on the Outer Continental Shelf off any coast of the United States relating to allegations
4 of unpaid wages. You have been identified as one of the potential members of the
5 Settlement and you may be one of those entitled to receive a monetary share of the
6 settlement. For information contact [Settlement Administrator] at [1-888-888-888].”

7 84. Within ten (10) days after the Settlement Administrator sends the Class
8 Notice, the Settlement Administrator shall send a follow-up postcard, text message and/or
9 email to each Class Member containing a reminder of the applicable deadlines associated
10 with the Settlement, a brief statement of the actions each Class Member may take with
11 respect to the Settlement, and the contact information for the Settlement Administrator
12 and Class Counsel if the Class Members have any further questions about the Settlement.

13 85. Within ten (10) days after the Settlement Administrator sends the Class
14 Notice, the Settlement Administrator shall conduct a telephonic phone call campaign
15 directed to each member of the FLSA Collective who has not returned the FLSA Opt-In
16 Form in order to confirm his or her receipt of the Class Notice to FLSA Collective
17 Members, to inform the FLSA Collective Member of the deadline to return the opt-in
18 form, and to direct the FLSA Collective Member to contact Class Counsel with any
19 questions he or she may have concerning the Settlement. Every seven (7) days thereafter
20 until the deadlines for FLSA Collective Members to opt in to the Settlement, the
21 Settlement Administrator shall revise its list of those FLSA Collective Members who
22 have not returned the FLSA Opt-In Form and shall again contact such individuals
23 telephonically to provide them with the foregoing information. The Settlement
24 Administrator shall provide copies of its updated list of FLSA Class Members who have
25 timely opted in the Settlement to Class Counsel and Defendant’s Counsel on a weekly
26 basis. No later than fourteen (14) days after the Notice Period ends, the Settlement
27 Administrator shall file with the Court, and serve on Class Counsel and Defendant’s
28 Counsel, the FLSA Opt-In Form returned by FLSA Class Members.

1 86. At least seven (7) calendar days prior to the final approval hearing, the
2 Settlement Administrator will provide a declaration of due diligence and proof of mailing
3 with regard to the mailing of the Notice Packet to counsel for all Parties.

4 87. If the Settlement Administrator receives a FLSA Opt In Form on or before
5 the Opt In Deadline but it is unsigned by the FLSA Collective Member, then within five
6 (5) calendar days of its receipt of the defective form, the Settlement Administrator shall,
7 after retaining a copy of the defective form, mail the defective form back to the FLSA
8 Collective Member with instructions on how to cure the defect and instructions that the
9 corrected form must be received by the Settlement Administrator by the original deadline
10 set forth on the Notice or seven (7) days after the mailing of the defective form (whichever
11 is later). If the FLSA Collective Member's Opt In Form remains defective after this
12 opportunity to cure, unless the Parties agree otherwise, it shall be rejected by the
13 Settlement Administrator and the Settlement Administrator shall send that person a notice
14 stating the reason the claim was denied.

15 88. To the extent a Claimant disputes the Individual Shifts shown in his or her
16 California Class Form or FLSA Opt In Form, the Claimant may produce evidence to the
17 Settlement Administrator establishing the dates he or she contends to have worked for
18 Defendant on an oil platform on the outer continental shelf as a Class Member.
19 Defendant's records will be presumed determinative. The Settlement Administrator shall
20 notify counsel for the Parties of any disputes. Defendant shall review its records and
21 provide further information to the Settlement Administrator, as necessary. The Settlement
22 Administrator shall resolve any disputes and notify counsel for the Parties of its decision.

23 89. The Settlement Administrator's determination of eligibility for any
24 Individual Settlement Payments under the terms of this Stipulation of Settlement shall be
25 conclusive, final and binding on all Parties and all Class Members, so long as the
26 Settlement Administrator has first consulted with the Parties regarding any disputes or
27 questions as to eligibility.

28 //

1 90. **Exclusions.** The Notice shall provide that California Class Members who
2 wish to exclude themselves from the Settlement must timely submit an Exclusion Letter.
3 Plaintiffs shall not be permitted to submit an Exclusion Letter to exclude himself from
4 this Settlement Agreement. Any California Class Member who properly requests
5 exclusion using this procedure will not be entitled to any payment from the Settlement
6 and will not be bound by the Stipulation of Settlement or have any right to object, appeal
7 or comment thereon. California Class Members who fail to submit an Exclusion Letter
8 shall be bound by all terms of the Stipulation of Settlement and any judgment entered in
9 the Lawsuit if the Settlement is approved by the Court. Any disputes regarding the
10 timeliness, validity or effectiveness of an Exclusion Letter shall be decided by the
11 Settlement Administrator consistent with the terms of this Settlement Agreement, with
12 the Parties' input, if appropriate. The date of the postmark on the mailing envelope for
13 any Exclusion Letter shall be the exclusive means used to determine whether the
14 Exclusion Letter has been timely submitted.

15 91. **Opt Out List.** The Settlement Administrator shall promptly log each
16 request for exclusion from Settlement that it receives. No later than five (5) business days
17 after the Opt Out Period expires, the Settlement Administrator shall provide to Class
18 Counsel and Defendant a complete Opt Out List together with copies of the opt out
19 requests. Before the hearing on Plaintiffs' motion for final approval of the settlement, the
20 Settlement Administrator shall submit a declaration to the Court attesting to the accuracy
21 of the Opt Out List. To preserve Class Members' privacy, the Opt Out List shall be
22 submitted under seal.

23 92. **Objections by California Class Members.** The Class Notice shall inform
24 the California Class Members of their right to object to the Settlement. Only California
25 Class Members who do not exclude themselves from the California Class will be
26 permitted to object. Any Class Member who does not seek to be excluded from the
27 Settlement, and who wishes to object to the Settlement must file a written objection with
28 the Court no later than the Objection/Exclusion Deadline, or seven (7) days after the re-

1 mailing of the California Notice Packet to that Class Member, whichever is later. The
2 postmark date of mailing shall be deemed the exclusive means for determining that an
3 objection was served timely. The objection must include: (a) the full name of the Class
4 Member; (b) the case name and number; (c) in clear and concise terms, a statement of the
5 reasons why the objector believes that the Court should find that the Settlement is not in
6 the best interest of the Class and the reasons why the Settlement should not be approved,
7 including the legal and factual arguments supporting the objection. California Class
8 Members who submit a timely objection will have the right to appear at the final approval
9 hearing and may appear through their own attorney at the California Class Member's
10 expense, but such appearance shall not be a prerequisite to the Court's consideration of
11 any timely-filed objection. A copy of any objection must be simultaneously mailed to
12 the Settlement Administrator. Unless otherwise ordered by the Court, Class Members
13 shall not be entitled to appear and or object at the final approval hearing unless they have
14 submitted a timely written objection pursuant to this Section. If a California Class
15 Member submits both an Exclusion Letter and an objection, the Exclusion Letter will be
16 valid, while the objection will be invalid.

17 93. FLSA Collective Members must mail or deliver a completed FLSA Opt In
18 Form, as applicable, to the Settlement Administrator by the Opt In Deadline, or seven (7)
19 days after the re-mailing of the Notice Packet to that Class Member, whichever is later.
20 The timeliness of submitted FLSA Opt In Forms will be determined by valid postmark.
21 If the postmark is illegible or missing, the FLSA Opt In Form shall be deemed timely if
22 it is received within five (5) days after the Opt In Deadline. Within seven (7) days after
23 the expiration of the Opt In Deadline, or seven (7) days after the re-mailing of the Notice
24 Packet to that Class Member, whichever is later, the Settlement Administrator shall, after
25 making a copy, transmit all originals of the FLSA Opt In Forms to Class Counsel. Class
26 Counsel will file all FLSA Opt In Forms received from the Settlement Administrator,
27 with the Court ten (10) court days after receipt of the FLSA Opt In Forms from the
28 Settlement Administrator. Should the Settlement Agreement not receive Final Approval

1 such consents will be deemed immediately cancelled ab initio, as if they were never
2 executed or filed.

3 94. **Objections by FLSA Class Members.** The FLSA Class Notice shall
4 inform the FLSA Class Members, who opt in to the FLSA Class, of their right to object
5 to the Settlement. Only FLSA Class Members who validly opt in to the FLSA Class will
6 be permitted to object. Any FLSA Class Member who opts in, and who wishes to object
7 to the Settlement must file a written objection with the Court no later than the
8 Objection/Exclusion Deadline, or seven (7) days after the re-mailing of the FLSA Notice
9 Packet to that Class Member, whichever is later. The postmark date of mailing shall be
10 deemed the exclusive means for determining that an objection was served timely. The
11 objection must include: (a) the full name and signature of the FLSA Class Member; (b)
12 the case name and number; (c) in clear and concise terms, a statement of the reasons why
13 the objector believes that the Court should find that the Settlement is not in the best
14 interest of the FLSA Class and the reasons why the Settlement should not be approved,
15 including the legal and factual arguments supporting the objection. FLSA Class Members
16 who submit a timely objection will have the right to appear at the final approval hearing
17 and may appear through their own attorney at the FLSA Class Member's expense, but
18 such appearance shall not be a prerequisite to the Court's consideration of any timely-
19 filed objection. Unless otherwise ordered by the Court, FLSA Class Members shall not
20 be entitled to object at the final approval hearing unless they have submitted a timely
21 written objection pursuant to this Section.

22 95. Defendant will provide the Settlement Administrator with sufficient funds
23 to make all payments due to Plaintiffs, Class Counsel, the LWDA, the Settlement
24 Administrator, and the Claimants, plus any owed Payroll Taxes as soon as practicable,
25 but no later than fifteen (15) business days after the Payment Obligation and Class
26 Release Date. The Settlement Administrator will mail or wire all required payments no
27 later than fourteen (14) calendar days after the Payment Obligation and Class Release
28 Date. Class Members will receive a reminder postcard if they have not cashed their

1 settlement check in 30 days after issuance. If a Claimant’s check is returned to the
2 Settlement Administrator, the Settlement Administrator will make all reasonable efforts
3 to re-mail it to the Claimant at his or her correct address. Any checks for the Individual
4 Settlement Payments that remain uncashed after 90 days will be voided and, if the total
5 amount of such unclaimed funds exceeds \$20,000.00, their amounts will be allocated in
6 a second allocation to participating California Class members who cashed their initial
7 checks (“Second Distribution”). Any Second Distribution checks not negotiated after 90
8 days will be voided — or any initially unclaimed funds, if the amount is \$20,000.00 or
9 less — shall be distributed to the Legal Aid Foundation of Los Angeles, or if that entity
10 is not approved by the Court, another appropriate recipient that the Court may designate
11 at the time of final approval. This paragraph regarding the disposition of uncashed checks
12 may be modified by the Court in its discretion. Upon completion of administration of the
13 Settlement, the Settlement Administrator shall provide written certification of such
14 completion to the Court, Class Counsel and Defendant’s Counsel.

15 96. No person shall have any claim against Defendant, Defendant’s Counsel,
16 Plaintiffs, the Class, Class Counsel or the Settlement Administrator based on mailings,
17 distributions and payments made in accordance with this Stipulation of Settlement.

18 **IX. MOTION FOR FINAL APPROVAL**

19 97. Plaintiffs shall timely file the motion for final approval and request entry
20 of the Final Approval Order and Judgment. Seven (7) calendar days prior to filing the
21 motion for final approval of the Settlement, Class Counsel shall provide a draft of the
22 motion to Defendant’s Counsel for review.

23 **X. NO EFFECT ON EMPLOYEE BENEFITS**

24 98. The Individual Settlement Payments and the Service Award shall not have
25 any effect on the eligibility for, or calculation of, any employee benefits (e.g. vacation,
26 retirement plans, etc.) of Claimants or Plaintiffs. No benefit, including but not limited to
27 401K benefits, shall increase or accrue as a result of any payment made as a result of this
28 Settlement.

1 **XI. PUBLICITY**

2 99. Plaintiffs and Class Counsel agree not to disclose or publicize this
3 Settlement, including the fact of the Settlement, its terms or contents, and the negotiations
4 underlying the Settlement, in any manner or form, directly or indirectly, to any person or
5 entity, except potential Class Members and as shall be contractually required to effectuate
6 the terms of the Settlement. For the avoidance of doubt, this section means Plaintiffs and
7 Class Counsel agree not to issue press releases, communicate with, or respond to any
8 media or publication entities, publish information in manner or form, whether printed or
9 electronic, on any medium or otherwise communicate, whether by print, video, recording
10 or any other medium, with any person or entity concerning the Settlement, including the
11 fact of the settlement, its terms or contents and the negotiations underlying the Settlement,
12 except as shall be contractually required to effectuate the terms of the Settlement.
13 However, for the limited purpose of allowing Class Counsel to prove adequacy as class
14 counsel in other actions, Class Counsel may disclose the name of the Parties in this action
15 and the venue/case number of this action (but not any other settlement details) for such
16 purposes.

17 **XII. VOIDING THE AGREEMENT**

18 100. If the Court does not approve either preliminarily or finally any material
19 term or condition of the Settlement Agreement, or if the Court effects a material change,
20 then this entire Agreement and the Settlement Agreement will be voidable and
21 unenforceable, subject to the Parties' agreement to the contrary, and the costs of
22 administration shall be paid entirely and exclusively by Defendant. In such a case, this
23 Settlement and the Stipulation of Settlement shall be null and void ab initio and any order
24 or judgment entered by the Court in furtherance of this Settlement shall be treated as
25 withdrawn or vacated by stipulation of the Parties. The court's failure to grant
26 preliminary or final approval, under circumstances that permit the parties to refile
27 amended motions will not be grounds to void the agreement. Class Members and
28 Defendant shall be returned to their respective statuses as of the date immediately prior

1 to the execution of this Stipulation of Settlement. In the event an appeal is filed from the
2 Final Approval Order and Judgment, or any other appellate review is sought prior to the
3 Payment Obligation and Class Release Date, administration of the Settlement shall be
4 stayed pending final resolution of the appeal or other appellate review. If this Settlement
5 Agreement is terminated, cancelled, or fails to become effective for any reason, the
6 following apply:

- 7 a. Within five (5) business days after written notice is sent by Class Counsel
8 or Defendant to all Parties hereto and the Settlement Administrator, the
9 Notice and Administration Fund, less any funds paid or expenses incurred
10 but not yet paid, and any other cash deposited by Defendant pursuant to this
11 Agreement shall be refunded to Defendant, including all interest earned or
12 accrued;
- 13 b. This Agreement shall be without force and effect upon the rights of the
14 Parties hereto, and none of its terms shall be effective or enforceable, with
15 the exception of this Section, and all of its subparagraphs, which shall
16 remain effective and enforceable;
- 17 c. The Parties shall be deemed to have reverted *nunc pro tunc* to their
18 respective status as of the date of the filing of this Agreement in the Central
19 District of California, including with respect to any Court-imposed
20 deadlines.
- 21 d. All orders entered in connection with this Agreement and settlement shall
22 be vacated without prejudice to any Party's position on the issue of
23 consolidation, class certification, and the Parties shall be restored to their
24 litigation positions existing on the date of execution of this Agreement;
- 25 e. The Parties shall proceed in all respects as if this Agreement and related
26 documentation and orders had not been executed, and without prejudice in
27 any way from the negotiation or fact of this Agreement or the terms of the
28 settlement.

1 **XIII. PARTIES' AUTHORITY**

2 101. The signatories hereto represent that they are fully authorized to enter this
3 Stipulation of Settlement and bind the Parties to the terms and conditions hereof.
4 Electronic signatures shall be fully enforceable as if original.

5 **XIV. NO UNALLEGED CLAIMS**

6 102. Plaintiffs and Class Counsel represent that they, as of the date of execution
7 of this Settlement Agreement, are not currently aware of any: (a) unalleged claims in
8 addition to, or different from, those which are finally and forever settled and released
9 against the Released Parties by this Settlement, (b) they have no current intention of
10 asserting any other claims against Defendant or any of the Released Parties in any judicial
11 or administrative forum, and (c) that they do not currently know of or represent any
12 persons who have expressed any interest in pursuing litigation or seeking any recovery
13 against Defendant or any of the Released Parties. Nothing in this Paragraph will be
14 construed as a restraint on the right of any counsel to practice.

15 **XV. MUTUAL FULL COOPERATION**

16 103. The Parties and their counsel agree to fully cooperate with each other to
17 accomplish the terms of this Stipulation of Settlement, including but not limited to,
18 execution of such documents and to take such other action as may reasonably be
19 necessary to implement the terms of this Stipulation of Settlement. The Parties to this
20 Stipulation of Settlement shall use their best efforts, including all efforts contemplated by
21 this Stipulation of Settlement and any other efforts that may become necessary by order
22 of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set
23 forth herein. In the event the Parties are unable to reach agreement on the form or content
24 of any document needed to implement the Settlement, or on any supplemental provisions
25 or actions that may become necessary to effectuate the terms of this Stipulation of
26 Settlement, the Parties shall seek the assistance of the Court or the Mediator to resolve
27 such disagreement. The court's refusal to grant preliminary approval, but permitting the
28 parties to refile an amended motion, shall not be cause to void this settlement agreement.

1 **XVI. ADVICE OF COUNSEL**

2 104. The Parties to this Settlement Agreement are represented by competent
3 counsel, and they have had an opportunity to consult with counsel prior to its execution.
4 The Parties and their counsel are not giving any tax advice in connection with the
5 Settlement or any payments to be made pursuant to the Settlement Agreement. Each
6 Class Member will agree to indemnify and hold harm-less the Parties from any liability
7 for taxes, fees, costs, or assessments resulting from the failure to timely pay taxes,
8 interest, fees, or penalties owed. Neither Class Counsel nor Defendant’s Counsel intend
9 anything contained in this Settlement Agreement to constitute legal advice regarding the
10 taxability of any amount paid hereunder, nor shall anything in this Settlement Agreement
11 be relied upon as such.

12 **XVII. CIRCULAR 230 DISCLAIMER**

13 105. Each party to this Settlement Agreement including the Class Members (for
14 purposes of this section, the “acknowledging party” and each party to this Agreement
15 other than the acknowledging party, an “other party”) acknowledges and agrees that: (1)
16 no provision of this Settlement Agreement, and no written communication or disclosure
17 between or among the Parties or their attorneys and other advisers, is or was intended to
18 be, nor shall any such communication or disclosure constitute or be construed or be relied
19 upon as, tax advice within the meaning of United States Treasury Department circular
20 230 (31 CFR part 10, as amended); (2) the acknowledging party (a) has relied exclusively
21 upon his, her or its own, independent legal and tax counsel for advice (including tax
22 advice) in connection with this Agreement, (b) has not entered into this Settlement
23 Agreement based upon the recommendation of any other party or any attorney or advisor
24 to any other party, and (c) is not entitled to rely upon any communication or disclosure
25 by any attorney or adviser to any other party to avoid any tax penalty that may be imposed
26 on the acknowledging party, and (3) no attorney or adviser to any other party has imposed
27 any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
28 strategies (regardless of whether such limitation is legally binding) upon disclosure by

1 the acknowledging party of the tax treatment or tax structure of any transaction, including
2 any transaction contemplated by this Agreement.

3 **XVIII. NO PRIOR ASSIGNMENTS**

4 106. The Parties hereto represent, covenant, and warrant that they have not
5 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
6 or encumber to any person or entity any portion of any liability, claim, demand, action,
7 cause of action or rights released and dis-charged by this Stipulation of Settlement.

8 **XIX. NO ADMISSION**

9 107. Nothing contained herein, nor the consummation of this Stipulation of
10 Settlement, is to be construed or deemed an admission of liability, culpability, negligence,
11 or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the
12 Parties hereto has entered this Stipulation of Settlement with the intention of avoiding
13 further disputes and litigation with the attendant risk, inconvenience and expenses. This
14 Stipulation of Settlement is a settlement document and shall, pursuant to California
15 Evidence Code section 1152 and/or Federal Rule of Evidence 408 and/or any other
16 similar law, be inadmissible as evidence in any proceeding, except an action or
17 proceeding to approve the settlement, and/or interpret or enforce this Stipulation of
18 Settlement.

19 **XX. CONSTRUCTION**

20 108. The Parties hereto agree that the terms and conditions of this Stipulation
21 of Settlement are the result of lengthy, intensive arms' length negotiations between the
22 Parties and that this Stipulation of Settlement shall not be construed in favor of or against
23 any of the Parties by reason of the extent to which any Party or his or its counsel
24 participated in the drafting of this Stipulation of Settlement.

25 **XXI. JURISDICTION OF THE COURT**

26 109. Except for those matters to be resolved by the Mediator or the Settlement
27 Administrator as expressly stated, any dispute regarding the interpretation or validity of
28 or otherwise arising out of this Stipulation of Settlement, or relating to the Lawsuit or the

1 Class Released Claims, shall be subject to the exclusive jurisdiction of the Court, and the
2 Plaintiffs, Class Members, and Defendant agree to submit to the personal and exclusive
3 jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the
4 interpretation, implementation and enforcement of the terms of this Stipulation of
5 Settlement and all orders and judgments entered in connection therewith, and the Parties
6 and their counsel submit to the jurisdiction of the Court for purposes of interpreting,
7 implementing and enforcing the Settlement embodied in this Stipulation of Settlement
8 and all orders and judgments entered in connection therewith.

9 **XXII. CALIFORNIA LAW GOVERNS**

10 110. All terms of this Stipulation of Settlement and the exhibits hereto shall be
11 governed by and interpreted according to the laws of the State of California, regardless
12 of its conflict of laws.

13 **XXIII. INVALIDITY OF ANY PROVISION**

14 111. The Parties request that before declaring any provision of this Stipulation
15 of Settlement invalid, the Court shall attempt to construe all provisions valid to the fullest
16 extent possible, consistent with applicable precedents.

17 **XXIV. HEADINGS**

18 112. The headings contained herein are inserted as a matter of convenience and
19 for reference, and in no way define, limit, extend, or describe the scope of this Stipulation
20 of Settlement or any provision hereof.

21 **XXV. EXHIBITS**

22 113. The terms of this Stipulation of Settlement include the terms set forth
23 herein and the attached Exhibits 1-6, which are incorporated by this reference as though
24 fully set forth herein. Any exhibits to this Stipulation of Settlement are an integral part
25 of the Settlement.

26 **XXVI. AMENDMENT OR MODIFICATION**

27 114. This Stipulation of Settlement may be amended or modified only by a
28 written instrument signed by counsel for all Parties or their successors-in-interest.

XXVII. ENTIRE AGREEMENT

115. This Stipulation of Settlement, including Exhibits 1-6 attached hereto, contains the entire agreement between Plaintiffs and Defendant relating to the Settlement and transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party’s legal counsel, are superseded. No rights hereunder may be waived except in writing.

XXVIII. BINDING ON ASSIGNS

116. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

XXIX. NO SOLICITATION REGARDING CLAIMS, OBJECTIONS, EXCLUSIONS OR APPEALS

117. The Parties and their counsel shall not solicit or otherwise encourage Class Members to submit written objections to the Settlement, to request exclusion or to appeal from the Court’s Final Approval Order and Judgment.

XXX. INTERIM STAY OF PROCEEDINGS

118. The Parties agree to hold in abeyance all proceedings in the Lawsuit, except such proceedings necessary to implement and complete the Settlement, pending the final approval hearing to be conducted by the Court.

XXXI. COUNTERPARTS

119. This Stipulation of Settlement may be executed in counterparts, and when each of the Parties has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Stipulation of Settlement, which shall be binding upon and effective as to all Parties.

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XXXII. PLAINTIFFS' AGREEMENT TO BE BOUND

120. By signing this Stipulation of Settlement, Plaintiffs agree to be bound by the terms herein. If any of the Plaintiffs object to or opt out of the Settlement, Defendant will have the option at its discretion of rejecting the Settlement in its entirety.

XXXIII. NOTICE OF SETTLEMENT TO THE LWDA

121. Plaintiffs hereby represents that Plaintiffs will provide notice of this Agreement and proposed settlement to the Labor and Workforce Development Agency at the time the motion for preliminary approval is filed as required by California Labor Code Section 2699(1)(2).

IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.

Dated _____

Kyle Jensen
On behalf of himself and the California Class and the FLSA Class

Dated _____

Chris Beatty
On behalf of himself and the California Class and the FLSA Class

Dated _____

SECORP INDUSTRIES
By: _____
Title: _____

XXXII. PLAINTIFFS' AGREEMENT TO BE BOUND


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IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.

Dated 9/11/2020



Kyle Jensen
On behalf of himself and the California Class and the FLSA Class

Dated _____

Chris Beatty
On behalf of himself and the California Class and the FLSA Class

Dated _____

SECORP INDUSTRIES
By: _____
Title: _____

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Dated _____

Kyle Jensen
On behalf of himself and the California Class and the FLSA Class

Dated 8.2.2020

C. Beatty
Chris Beatty
On behalf of himself and the California Class and the FLSA Class

Dated _____

SECORP INDUSTRIES
By: _____
Title: _____

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IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and their duly authorized attorneys as of the day and year herein set forth.


Dated _____

Kyle Jensen
On behalf of himself and the California
Class and the FLSA Class

Dated _____

Chris Beatty
On behalf of himself and the California
Class and the FLSA Class

Dated 9/9/2020



SECORP INDUSTRIES
By: John Hall
Title: President