

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
REPRESENTATIVE ACTION SETTLEMENT AGREEMENT & RELEASE

Patricia Major, in a representative capacity only on behalf of other members of the general public similarly situated v. Total Equipment Management Services, LLC, et al.

Alameda County Superior Court

Case Number RG20065768

This Private Attorneys General Act of 2004 Representative Action Settlement and Release (“Settlement Agreement”) is made and entered into by and between Plaintiff Patricia Major (“Plaintiff” or “Major”) and Defendant Total Equipment Management Services, LLC (“Defendant” or “TEMS”), subject to the terms and conditions of this Agreement and the approval of the Superior Court of the State of California for the County of Alameda (“Court”). (Plaintiff and Defendant are collectively referred to herein as “the Parties.”) Plaintiff enters into this Settlement Agreement on behalf of herself and all current and former non-exempt employees who worked for TEMS in California at any time during the period from April 14, 2019 through the date the Court approves this Settlement and dismisses the action in its entirety.

The Parties agree that all representative claims, causes of action, or theories brought or that could have been brought based upon the facts alleged pursuant to the California Private Attorneys General Act, California Labor Code sections 2698, *et seq.* (“PAGA”) in (a) Plaintiff’s pre-filing PAGA notice letter to the California Labor and Workforce Development Agency (“LWDA”) dated January 30, 2020 as LWDA Case No. LWDA-CM-769655-20 (the “LWDA Letter”) and (b) the PAGA civil complaint Plaintiff filed in the Court, as Case Number RG20065768 (the “PAGA Action”). The allegations in the LWDA Letter and PAGA Action include, without limitation, claims that TEMS failed to provide Plaintiff and Allegedly Aggrieved Employees (as this term is defined below) proper meal and rest periods, failed to pay Plaintiff and Allegedly Aggrieved Employees all minimum and overtime wages due, failed to issue Plaintiff and Allegedly Aggrieved Employees accurate and complete wage statements, failed to timely pay Plaintiff and Allegedly Aggrieved Employees all wages owed upon separation of employment, failed to timely pay Plaintiff and Allegedly Aggrieved Employees all wages owed during employment, and failed to reimburse Plaintiff and Allegedly Aggrieved Employees for expenses they incurred in the performance of their job duties (the “Alleged Claims”). Through this Settlement Agreement, the Parties agree that these Alleged Claims shall be, and hereby are, fully and completely ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of One Hundred and Seventy Five Thousand Dollars and Zero Cents (\$175,000.00) (hereinafter referred to as the “PAGA Settlement Amount”) for settlement of the PAGA civil penalties sought in the PAGA Action, which shall be inclusive of (1) all of Plaintiff’s Counsel’s attorneys’ fees and costs in connection with the PAGA Action and this Settlement Agreement, (2) Plaintiff’s enhancement award, and (3) any third party administrator fees and costs.

Article I.

Definitions

In addition to the definitions set forth in the two paragraph preamble above, and elsewhere in this Settlement Agreement, the following terms, when used in this Settlement Agreement, will have the following meanings:

1. “Action” means the case entitled *Patricia Major, in a Representative capacity only, and on behalf of other members of the general public similarly situated v. Total Equipment Management Services, LLC, and DOES 1 - 10, inclusive*, Case No. RG20065768, pending in the Superior Court of the State of California for the County of Alameda.

2. “Allegedly Aggrieved Employees” means Plaintiff Patricia Major, and all current and former non-exempt employees who worked for Defendant in California at any time during the period from April 14, 2019, through the date the Court approves this Settlement and dismisses the action in its entirety.

3. “Attorneys’ Fees and Costs” means such award of fees and costs to be paid to Plaintiff’s Counsel for the services they have rendered and will render to the Allegedly Aggrieved Employees in the PAGA Action, subject to Court approval.

4. “Defense Counsel” means Ogletree, Deakins, Nash, Smoak & Stewart P.C., including Hardy Ray Murphy and David Szwarczstejn.

5. “Effective Date” of the PAGA Settlement means the date by which the last of the following has occurred: (a) the Parties and their counsel have executed this stipulation (b) the PAGA Settlement is approved by the Court, and (c) the Court issues a Judgment in the Action.

6. “Individual Settlement Payment” means the portion of the PAGA Penalties Fund allocated to each Allegedly Aggrieved Employee based on the formula described in this Settlement Agreement.

7. “Mediator” means Michael Roberts, Esq.

8. “Notice” means the form of notice that will be sent to each Allegedly Aggrieved Employee accompanying their Individual Settlement Payment, which should be substantially in the form attached hereto as Exhibit A.

9. “PAGA Penalties Fund” means the amount from the PAGA Settlement Amount which remains after subtracting from the PAGA Settlement Amount the following amounts: (a) Plaintiff’s attorneys fees and costs, as approved by the Court; (b) Plaintiff’s Enhancement Award, as approved by the Court; and (c) Settlement Administration Costs, as approved by the Court. The PAGA Penalties Fund includes all Unawarded Amounts and shall be allocated to pay all applicable penalties under PAGA to (a) the LWDA, and (b) the Individual Settlement Payment allocated to each Allegedly Aggrieved Employee, as described below.

10. “PAGA Settlement Amount” means the gross sum of One Hundred and Seventy-Five Thousand Dollars and No Cents (\$175,000.00) if the Court approves this Settlement, and the Effective Date occurs. The PAGA Settlement Amount includes: (a) the PAGA Penalties Fund to the “LWDA” and Allegedly Aggrieved Employees; (b) the award of Attorneys’ Fees and Costs to Plaintiff’s Counsel; (c) Settlement Administration Costs, and (d) Plaintiff’s Enhancement Award.

11. “Plaintiff’s Counsel” means Sullivan & Yaeckel Law Group, APC, including William B. Sullivan, Eric K. Yaeckel, and Ryan Kuhn.

12. “Released Claims” means all PAGA claims, causes of action or theories for civil penalties, attorney fees, or costs recoverable under PAGA that were actually alleged or that could have been alleged against the Released Parties based on the factual allegations set forth in the original, amended and/or operative complaint(s) or LWDA letters in this Action, including claims regarding violations of Labor Code sections 201, 202, 203, 226, 226(a), 226.7, 510, 512, 558, 1194, 1197, and 2802, as well as the applicable IWC Wage Order(s), or any claim that could be brought pursuant to PAGA with respect to:

- a. Any claims for unpaid wages (including but not limited to overtime pay, minimum wage, or regular wages) or the failure to timely pay wages, whether contractual or statutory;
- b. Any claims for failure to provide meal periods in accordance with the California Labor Code and/or applicable Wage Orders, including any claims regarding failure to pay premium pay and failure to pay premium pay at the correct rate;
- c. Any claim for failure to authorize and permit rest periods in accordance with the applicable California Wage Orders or Labor Code, including any claims regarding failure to pay premium pay and failure to pay premium pay at the correct rate;
- d. Any claim for failure to keep accurate records or provide accurate wage statements;
- e. Any claim for failure to reimburse business expenses;
- f. Any claim for failure to pay all wages at the time of termination; and
- g. Claims for attorneys’ fees, interest, penalties, or premiums in connection with claims in provisions a through f above.

13. “Released Parties” means Defendant Total Equipment Management Services, LLC, and its subsidiaries, affiliates, parents, and attorneys, and their respective successors and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries and agents, and each of their past present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers.

14. “Settlement” means the terms and conditions set forth in this Settlement Agreement.

15. “Settlement Administrator” means CAC Services, LLC, subject to Court approval.

16. “Settlement Administration Costs” means the amount from the PAGA Settlement Amount, which shall be allocated to the Settlement Administrator for services rendered in administering the Settlement, not to exceed Two Thousand Dollars (\$2,000.00), subject to Court approval.

17. “Settlement Period” means the period from April 14, 2019, through approval of this Settlement Agreement by the Court.

18. “Settlement Approval” means the settlement approval order that will be entered by the Court.

19. “Unawarded Amount” means any portion of the amounts described in Article IV below as Attorneys’ Fees and Costs (describe as being up to \$58,333.33 and \$10,000.00, respectively), Settlement Administration Costs (described as being up to \$2,000.00), and Plaintiff’s Enhancement Award (described as being up to \$30,000.00), that are not awarded by the Court and are instead retained to the PAGA Penalties Fund as set forth in Article IV.

20. “1542 Waiver” means an express waiver, to the fullest extent permitted by law, of the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which Section provides:

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

Article II

Procedures for Obtaining Settlement Approval and Notifying the LWDA

21. Plaintiff’s Counsel will request, by *ex parte* application, a hearing before the Court to seek approval of the Settlement Agreement on a mutually available date as soon as reasonably practicable. In connection with such hearing, Plaintiff’s Counsel will present this Settlement Agreement to the Court and will request that the Court issue an order approving and incorporating by reference the terms and conditions of the Settlement Agreement (“Settlement Approval Order”).

22. Defendant agrees not to oppose Plaintiff’s application for Settlement Approval unless the application is inconsistent with the terms set forth in this Settlement Agreement.

23. Plaintiff shall provide the requisite notice of this Settlement to the LWDA at the same time that Plaintiff requests Settlement Approval from the Court.

Article III

Settlement Administrator

24. The Parties agree to retain CAC Services, LLC as the third-party Settlement Administrator to administer this Settlement. The Settlement Administrator will be responsible for establishing a qualified settlement fund (“QSF”) and issuing payments and appropriate tax forms to Allegedly Aggrieved Employees, the LWDA, and Plaintiff’s Counsel.

Article IV

Distribution of Settlement Proceeds

25. Components of PAGA Settlement Amount. The PAGA Settlement Amount shall have four components: (a) the PAGA Penalties Fund; (b) Attorneys’ Fees and Costs; (c) Settlement Administration Cost; and (d) Plaintiff’s Enhancement Award. All amounts in the PAGA Settlement Amount to be paid by TEMS shall be paid to the QSF, which shall be administered by the Settlement Administrator. All amounts to be paid to anyone pursuant to this PAGA Settlement Agreement shall be paid out of the QSF.

- a. PAGA Penalties Fund. The Parties agree that the PAGA Penalties Fund portion of the PAGA Settlement Amount is Seventy-Four Thousand Six Hundred and Sixty-Six Dollars and Sixty Seven cents (\$74,666.67), plus any Unawarded Amount, which shall be paid to the Allegedly Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the original, amended and/or operative complaint(s) and/or the LWDA Letter with respect to Allegedly Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund, or Fifty-Six Thousand Dollars (\$56,000.00), plus Seventy-Five Percent (75%) of any Unawarded Amount, will be paid to the LWDA. The remaining Twenty-Five Percent (25%), or Eighteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$18,666.67), plus Twenty-Five Percent (25%) of any Unawarded Amount, will be paid to all Allegedly Aggrieved Employees on a pro-rata basis to each such Allegedly Aggrieved Employee based on the number of pay periods each such Allegedly Aggrieved Employee worked for Defendant during the Settlement Period. Individual Settlement Payments will be calculated according the following formula: multiplying the Twenty-Five Percent (25%) of the PAGA Penalties Fund payable to Allegedly Aggrieved Employees by a fraction, the numerator of which is each Allegedly Aggrieved Employee’s total pay periods worked during the Settlement Period, and the denominator of which is the total aggregate number of pay periods worked by all Allegedly Aggrieved employees during the Settlement Period.”

- b. Attorneys' Fees and Costs. In full satisfaction of all claims Plaintiff may have for attorneys' fees, litigation costs, and expenses arising out of the PAGA Action, the Parties agree that Plaintiff's Counsel shall be paid a total of Fifty-Eight Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three cents (\$58,333.33), and no more than Ten Thousand Dollars (\$10,000.00) in Costs. Defendant agrees not to oppose Plaintiff's application to the Court for Attorneys' Fees and Costs not to exceed this sum. The Attorneys' Fees and Costs to be awarded to Plaintiff are subject to the approval of the Court and will be paid only from the PAGA Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to Plaintiff's Counsel will be retained in the PAGA Penalties Fund as an Unawarded Amount.
- c. Settlement Administration Costs. The Parties agree that a portion of the PAGA Settlement Amount, not to exceed Two Thousand Dollars (\$2,000.00), shall pay for third-party administration fees that are necessary to administer the PAGA Settlement. Any Settlement Administration Costs not awarded by the Court will be added to the PAGA Penalties Fund as an Unawarded Amount.
- d. Plaintiff's Enhancement Award. Plaintiff may apply for the Court's approval of an Enhancement Award of up to Thirty Thousand Dollars (\$30,000.00), in exchange for her service as a PAGA Representative and her General Release below of all claims against Defendant, to be paid from the QSF. This enhancement payment is in addition to the payment to which she is entitled to as an Allegedly Aggrieved Employee. The payment for Plaintiff's Enhancement Award will be issued via an IRS Form 1099. The Enhancement Award to be awarded to Plaintiff is subject to the approval of the Court and will be paid only from the PAGA Settlement Amount. Any portion of the Enhancement Award not awarded to Plaintiff will be retained in the PAGA Penalties Fund as an Unawarded Amount.

Article V

Distribution of Settlement Proceeds

- 26. Number of Allegedly Aggrieved Employees: Defendant represents that there are approximately 45 Allegedly Aggrieved Employees as of November 16, 2021.
- 27. List of Allegedly Aggrieved Employees. Within five (5) business days after the Effective Date, Defendant will provide the Settlement Administrator a complete list of all Allegedly Aggrieved Employees ("Allegedly Aggrieved Employee List"). The Allegedly Aggrieved Employee List will include each Allegedly Aggrieved Employee's full name, most recent mailing address on file; Social Security number and hire and termination dates.
- 28. Funding of the Settlement. Within five (5) business days after the Effective Date, Defendant will deposit the PAGA Settlement Amount into the QSF to be established by the Settlement Administrator. The Settlement Administrator shall provide to Defendant complete

wiring instructions, including without limitation, the name of the account, name of the bank, routing number and bank account number. Defendant shall be deemed to have fully met its payment obligations upon payment to the Settlement Administrator and shall assume no responsibility for the security or distribution of settlement funds following payment to the Settlement Administrator.

29. Settlement Administration. Upon receipt of the PAGA Settlement Amount into the QSF, the Settlement Administrator will issue payments to: (a) Plaintiff's Counsel for Plaintiff's Counsel's fees and costs; (b) Plaintiff, for Plaintiff's Enhancement Award; (c) CAC Services, LLC, for its settlement administration costs; (d) the LWDA, as described above; and (e) Allegedly Aggrieved Employees, pursuant to the formula described above. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

30. Settlement Payments to Allegedly Aggrieved Employees. Within ten (10) business days of receipt of the PAGA Settlement Amount, the Settlement Administrator will issue each Allegedly Aggrieved Employee a check for his or her share of the PAGA Penalties Fund along with an explanatory Notice, which is attached to this Settlement Agreement as Exhibit A. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. The Settlement Administrator will then mail to each Allegedly Aggrieved employee their check for his or her share of the PAGA Penalties Fund together with the Notice. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If an Allegedly Aggrieved Employee's check is returned to the Settlement Administrator with a forwarding address provided by the United States Postal Service, the Settlement Administrator will promptly resend the check to that Allegedly Aggrieved Employee to that address, but this re-mailing will not extend the 180-day period to cash a check. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address, or Social Security number of the Allegedly Aggrieved Employee involved and will then perform a single re-mailing. Individual Settlement Payment checks will remain negotiable for 180 calendar days, and Allegedly Aggrieved Employees will have 180 calendar days from the date of the mailing to cash their Individual Settlement Payment checks.

31. Undeliverable and non-cashed checks. Failure to cash Individual Settlement Payment checks within 180 calendar days of mailing will result in Allegedly Aggrieved Employees forfeiting their right to share in the settlement proceeds. Funds represented by Individual Settlement Payment checks returned as undeliverable and those Individual Settlement Payment checks remaining un-cashed for more than 180 days after issuance will be tendered by the Settlement Administrator to the State of California Unclaimed Wages Fund together with a list of the names of each such Allegedly Aggrieved Employee and the amount of their payment.

32. No advance notice of the Settlement will be mailed to Allegedly Aggrieved Employees, nor will Allegedly Aggrieved Employees be given an opportunity to exclude themselves from the Settlement or to object to the Settlement.

33. All Individual Settlement Payments to Allegedly Aggrieved Employees will be treated as civil penalties and thus miscellaneous income for which an IRS Form 1099 will be issued. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement. Plaintiff and the Allegedly Aggrieved Employees who receive Individual Settlement Payments pursuant to the settlement are exclusive responsible for all tax obligations related or pertaining to the Individual Settlement Payments.

34. No person shall have any claim against Defendant, Defense Counsel, Plaintiff, the Allegedly Aggrieved Employees, or Plaintiff's Counsel based on mailings, distributions, and payments made in accordance with this Settlement.

Article VI

Release by Allegedly Aggrieved Employees

35. As of the Effective Date, the LWDA, and all Allegedly Aggrieved Employees, including Plaintiff, release the Released Parties from the Allegedly Aggrieved Employees' Released Claims. The Allegedly Aggrieved Employees' Released Claims include a 1542 Waiver, limited to the Released Claims. The Allegedly Aggrieved Employees' Released Claims shall be effective as to all claims set forth herein for the period from April 14, 2019, through the date the Court approves this Settlement and dismisses the action in its entirety.

36. Allegedly Aggrieved Employees may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Allegedly Aggrieved Employees' Released Claims, but upon the Effective Date, Allegedly Aggrieved Employees shall be deemed to have, and by operation of the Settlement Approval Order shall have, fully, finally, and forever settled and released any and all of the Allegedly Aggrieved Employees' Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. Allegedly Aggrieved Employees agree not to sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Allegedly Aggrieved Employees' Released Claims. It is the intent of the Parties that the Settlement Approval Order entered by the Court shall have full *res judicata* effect and be final and binding upon Plaintiff, the Allegedly Aggrieved Employees, the LWDA, and the State of California regarding the Allegedly Aggrieved Employee' Released Claims.

Article VII

General Release by Plaintiff

37. In consideration for the Enhancement Award to Plaintiff, Plaintiff will be deemed, upon the Effective Date, to have released the Released Parties of and from all of the Released Claims.

38. In further consideration of the above, and the benefit of this Settlement Agreement, Plaintiff unconditionally, irrevocably, and absolutely releases and discharges Defendant, and the

Released Parties, from all losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the transactions and occurrences between the Parties, including Plaintiff's employment with Defendant. Notwithstanding the foregoing, the Parties agree and acknowledge that nothing in this Settlement Agreement releases or waives any rights or claims Plaintiff have or may have regarding: (i) benefits, or rights to seek benefits, under applicable workers' compensation and/or unemployment insurance; (ii) those which, by law, cannot be waived by signing this Settlement Agreement; or (iii) to enforce this Settlement Agreement. Barring those excluded rights, this release should have the broadest possible application and includes, but is not limited to, all torts, contract, common law, constitutional or other statutory claims, and all claims for attorney fees, costs, and expenses. This release extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to any alleged act or omission toward or against Employee by Employer or the Released Parties that occurred at any time prior to and including the date on which Employee executes this Settlement Agreement.

39. In connection with her release set forth herein, Plaintiff acknowledges and understands that Plaintiff and/or her attorneys may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but that they expressly agree to fully, finally and forever settle any and all claims, known or unknown, suspected or unsuspected, which exist or may exist on her or their behalf against the Released Parties at the time of execution of this Settlement Agreement.

40. Plaintiff's release set forth herein includes a waiver of all rights under California Civil Code § 1542, which provides:

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

Upon the Effective Date, Plaintiff will be deemed to have waived her rights under Civil Code § 1542. Plaintiff warrants that she has read this Settlement Agreement, including the waiver of California Civil Code § 1542, and that she freely and knowingly enters into the Section 1542 waiver.

Article VIII

Additional Settlement Terms and Conditions

41. No Other Claims. Plaintiff and Plaintiff's Counsel are not currently aware of (other than this Action) any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged

facts or legal theories upon which any claims or causes of action could be brought against Defendant, except such facts and theories specifically alleged in the operative complaint in this Action. Plaintiff and Plaintiff's Counsel will further represent that, other than this Action, they have no current intention of asserting any other claims against Defendant in any judicial or administrative forum. Plaintiff and Plaintiff's Counsel will further represent that they do not currently know of or represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Defendant.

42. No Right to Appeal. The Parties agree and intend that the Settlement shall be final at the time of Settlement Approval and Entry of Judgment. The Parties agree to waive any and all rights of appeal with respect to the Action, including but not limited to, the Court's Settlement Approval Order in this Action and any judgment entered by the Court pursuant to this Settlement Agreement. For avoidance of doubt, this provision will take effect on the Effective Date.

43. Acknowledgment That PAGA Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after an arm's-length negotiations by experienced counsel with the assistance of the Mediator. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

44. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. The Parties hereto have entered into this Settlement with the intention of avoiding further disputes and litigation with the attendant risk, inconvenience, and expenses. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this PAGA Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

45. No Credit Toward Benefit Plans. Payments to Allegedly Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Allegedly Aggrieved Employee may be eligible, including, but not limited to, profit-sharing plans, bonus plans, 401 (k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Allegedly Aggrieved Employee may be entitled under any benefit plans.

46. Tax Treatment and Indemnification. No portion of the settlement amounts paid constitute wages and, as such, Defendant has no tax or withholding obligations. Defendant is not

giving tax advice and is not liable for any tax consequences resulting from this settlement. Allegedly Aggrieved Employees, including Plaintiff, will assume any tax obligations or consequences that may arise from this Settlement. Allegedly Aggrieved Employees release any and all claims they have or may have against Defendant or Released Parties for any claims, demands, deficiencies, levies, assessments, executions, judgments, penalties, taxes, indemnification, and any other recoveries related to any payments made under this Settlement or any compensation provided at any time by Defendant or any of the Released Parties.

47. No Tax Advice. Plaintiff's Counsel and Defense Counsel do not intend this Settlement Agreement to constitute legal or tax advice regarding any federal, state, or local tax issue. To the extent that this Settlement Agreement, or any of its Exhibits, are interpreted to contain or constitute advice regarding any federal, state, or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties. The tax issues for Plaintiff and each Allegedly Aggrieved Employee are unique to him or her, and Plaintiff and each Allegedly Aggrieved Employee are advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Settlement.

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

49. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

50. Judgment and Continued Jurisdiction. After entry of the Settlement Approval order, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-approval matters as may be appropriate under Court rules or as set forth in this Settlement.

51. Entire Agreement. This Settlement Agreement, including the Exhibit attached hereto, constitutes the entirety of the Parties' settlement terms. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, including the Memorandum of Understanding between the Parties, are merged herein.

52. Confidentiality. The Parties agree to discuss the terms of this Settlement only in settlement papers submitted to the Court or at the hearing on Plaintiff's request for Settlement Approval. The Parties and their counsel agree to keep the terms of this Settlement completely confidential. The Parties and their counsel agree not to otherwise publicize this Settlement, including, but not limited to, issuing press releases, posting summaries, or otherwise speaking to the press regarding the terms of this Settlement. If Plaintiff or Plaintiff's counsel are contacted by members of the press, they will respond only that the matter was amicably resolved.

53. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

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

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

56. California Law Governs. All terms of this Settlement Agreement and the Exhibit attached hereto will be governed by and interpreted according to the laws of the State of California, regardless of its conflict of laws.

57. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

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

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

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

61. Enforcement Action. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or

Patties will be entitled to recover from the unsuccessful Party or Parties its reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

62. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

63. Representation by Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel and reviewed in full.

64. Cooperation and Execution of Necessary Documents. All Parties agree to cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

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

66. Ability to Fund Settlement. Defendant represents that its business is solvent, and Defendant is able to pay the Settlement Amount within the time frame set forth herein. Specifically, Defendant has reviewed its financial status in contemplation of this Settlement Agreement and Defendant has determined it is able to comply with the Settlement Installment Payment Plan. Defendant agrees that the failure to review its financial status before entering this Settlement Agreement shall be deemed an intentional misrepresentation. Defendant further affirms that it has not consulted or retained bankruptcy counsel or have contemplated a bankruptcy filing as of the date of this Settlement.

**PLEASE READ CAREFULLY. THIS AGREEMENT CONTAINS A
GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

PLAINTIFF ACKNOWLEDGES AND AGREES THAT SHE HAS BEEN ADVISED THAT THIS AGREEMENT IS A BINDING AND LEGAL DOCUMENT. PLAINTIFF FURTHER AGREES THAT SHE HAS BEEN ADVISED TO SEEK LEGAL ADVICE REGARDING ALL ITS ASPECTS, AND THAT IN EXECUTING THIS AGREEMENT PLAINTIFF HAS ACTED VOLUNTARILY AND HAS NOT RELIED UPON ANY REPRESENTATION MADE BY THE DEFENDANT OR ANY OF ITS EMPLOYEES OR REPRESENTATIVE REGARDING THIS AGREEMENT'S SUBJECT MATTER AND/OR EFFECT. PLAINTIFF HAS READ AND FULLY UNDERSTANDS THIS AGREEMENT AND VOLUNTARILY AGREES TO ITS TERMS.

AGREED AND UNDERSTOOD:

Dated:

PATRICIA MAJOR

By _____
Plaintiff Patricia Major

Dated:

TOTAL EQUIPMENT MANAGEMENT
SERVICES, LLC.

By _____
Lewis Cunningham for
for Total Equipment Management Services, LLC

APPROVED AS TO FORM:

Dated:

SULLIVAN & YAECKEL LAW GROUP, APC

By _____
Eric Yaeckel, Esq.
Ryan T. Kuhn, Esq.
Attorneys for Plaintiff Patricia Major

Dated:

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART PC.

By _____
Hardy R. Murphy
David Szwarczstejn
Attorneys for Defendant Total Equipment
Management Services, LLC.