CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This Confidential Settlement Agreement and General Release of All Claims ("Settlement Agreement") is entered into by and between Michael Kant ("Plaintiff") and Bigge Crane and Rigging Company, Inc. ("Defendant"). The term "Party" or "Parties" as used herein shall refer to Plaintiff, Defendant or both, as appropriate.

1. **Recitals.** This Settlement Agreement is made with reference to the following facts:

(a) Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant from September 12, 2016 to October 29, 2019;

(b) On December 20, 2019, Plaintiff brought an action concerning Plaintiff's employment with Defendant, the termination of that employment, and Plaintiff's wages and compensation in connection with that employment, which action is pending as *Michael Kant v. Bigge Crane and Rigging Co.*, Alameda County Superior Court Case No. RG19047780 (the "Action"). In the Action, Plaintiff asserts claims for (1) breach of contract; (2) failure to provide accurate paystubs (Cal. Lab. Code § 226); (3) waiting time penalties; (4) unfair competition (Cal. Bus. & Prof. Code § 17200); (5) wrongful termination; and (6) discharge for disclosing violation of state law (Cal. Lab. Code § 1102.5). In a first amended complaint in the Action, Plaintiff added a cause of action under the California Private Attorney General Act (PAGA) (Cal. Lab. Code § 2699 *et seq*, seeking PAGA penalties on his own behalf. In the Action, Plaintiff prayed for special, general, and punitive damages, attorneys' fees, interest and costs, and any other relief the court may find just and equitable. Defendant answered the complaint with a general denial and raising affirmative defenses to Plaintiff's claims;

(c) There has been no determination on the merits of the Action but, in order to avoid additional cost and the uncertainty of litigation, the Parties desire to resolve any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties (as defined in Section 6(a) below) as of the date of execution of this Settlement Agreement.

2. **Nonadmission of Wrongdoing.** The Parties agree that neither this Settlement Agreement nor the furnishing of the consideration for this Settlement Agreement shall be deemed or construed at any time for any purpose as an admission by the Released Parties of wrongdoing or evidence of any liability or unlawful conduct of any kind.

3. **Consideration/Indemnification for Tax Consequences.**

(a) In consideration for signing this Settlement Agreement and complying with its terms, Plaintiff will be paid the total gross sum of [redacted], which will be paid on behalf of the Released Parties as follows:

(1) [redacted];

(2) [redacted]

(3) [redacted]

(4) as its portion of civil penalties under the California Labor Code Private Attorneys General Act of 2004 (PAGA), the sum of SEVEN HUNDRED FIFTY DOLLARS AND NO CENTS ($750.00) made payable to the California Labor and Workforce Development Agency, said amount to be reported on IRS Form 1099 as appropriate.

(b) Plaintiff agrees to indemnify and hold the Released Parties harmless for the amount of any taxes, penalties, or interest that may be assessed by any governmental tax authority against any of the Released Parties in connection with such governmental authority's determination that Defendant or any of the other Released Parties was required to, but failed to, withhold or report the correct amount of income or employment taxes from the payments made to Plaintiff or Aiman-Smith & Marcy ("Plaintiff's Counsel") pursuant to Section 3(a) of this Settlement Agreement. Plaintiff agrees that Plaintiff shall indemnify the Released Parties for the full amount of such liability within thirty (30) days after receipt of notice from Defendant or any of the other Released Parties of the assessment of such taxes, penalties, or interest.

4. No Consideration Absent Execution of this Agreement. Plaintiff understands and agrees that Plaintiff would not receive the consideration specified in Section 3(a) above, except for Plaintiff's execution of this Settlement Agreement and the fulfillment of the promises contained herein.

5. Disbursal of Settlement Funds/Dismissal of Action.

(a) Within fifteen (15) calendar days from the date Freeman Mathis & Gary, LLC ("Defendant's Counsel") receives all of the following: (i) the Settlement Agreement bearing the dates and signatures of Plaintiff and Plaintiff's Counsel; (ii) a fully-executed Request for Dismissal with prejudice of the Action as to all parties and all causes of action; (iii) an updated Employee's Withholding Allowance Certificate (IRS Form W-4) for Plaintiff; (iv) fully-executed Requests for the Taxpayer Identification Number and Certification (IRS Form W-9) for both Plaintiff and Plaintiff's Counsel; and (v) an executed copy of the Medicare Addendum attached as Exhibit A, Defendant, through Defendant's Counsel, shall make available to Plaintiff's Counsel the sums described in Section 3(a) above. If the date by which the payment described in Section 3(a) is to be made available to Plaintiff's Counsel falls on a Saturday, Sunday, or legal holiday in the State of California, then the date said payment shall be made available to Plaintiff's Counsel shall be the next following day which is not a Saturday, Sunday, or legal holiday in the State of California.

(b) Defendant's Counsel shall maintain custody of the fully-executed Request for Dismissal of the Action. Defendant's Counsel agrees not to file the Request for Dismissal until confirmation of Plaintiff's Counsel's receipt of the settlement sums set forth in

Section 3(a) above. Thereafter, Defendant's Counsel shall have the authority to immediately file the Request for Dismissal with the Court. No Party shall claim to be the prevailing party in the Action.

6. General Release, Claims Not Released and Related Provisions.

(a) General Release of Claims. Plaintiff, individually and on behalf of Plaintiff's heirs, executors, administrators, representatives, attorneys, successors, and assigns knowingly and voluntarily releases and forever discharges Defendant, including its parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, reinsurers, successors, and assigns, and their current and former employees, attorneys, officers, directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries, and insurers of such plans and programs (collectively, the "Released Parties"), to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against the Released Parties as of the date of execution of this Settlement Agreement including, but not limited to, any alleged violation of the California Labor Code, California Business & Professions Code, California Private Attorney General Act, any contract whether written, oral, or implied in fact, any other federal, state or local law, regulation or ordinance, any public policy, tort or common law and any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters.

(b) Claims Not Released. Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff's own vested accrued employee benefits under Defendant's health, welfare, or retirement benefits plans as of the date of execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under applicable workers' compensation (except as to claims under Labor Code sections 132a and 4553) or unemployment insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing this Settlement Agreement; or (iv) enforce this Settlement Agreement.

(c) Government Agencies. Nothing in this Settlement Agreement prohibits or prevents Plaintiff from filing a charge with or participating, testifying, or assisting in any investigation, hearing, action, or other proceeding before any federal, state, or local government agency (*e.g.*, EEOC, DFEH, NLRB, SEC, *etc.*), nor does anything in this Settlement Agreement preclude, prohibit, or otherwise limit, in any way, Plaintiff's rights and abilities to contact, communicate with, report matters to, or otherwise participate in any whistleblower program administered by any such agencies. Moreover, nothing in this Settlement Agreement prohibits or prevents Plaintiff from testifying in any administrative, legislative, or judicial proceeding concerning alleged criminal conduct or sexual harassment on the part of Defendant or any agents or employees of Defendant, when the Plaintiff has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the Legislature. However, to the maximum extent permitted by law and expressly excluding Plaintiff's participation in any federal whistleblower programs, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

(d) Collective/Class Action Waiver. If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective, or multi-party action or proceeding based on such a claim in which Defendant, or any of the other Released Parties identified in this Settlement Agreement, is a party.

7. **Waiver of California Civil Code section 1542.** To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

> **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.**

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Plaintiff expressly acknowledges this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Plaintiff understands this Settlement Agreement and the section 1542 waiver, and so Plaintiff freely and knowingly enters into this Settlement Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

8. **Acknowledgements and Affirmations.**

(a) Plaintiff affirms that Plaintiff has not filed or caused to be filed any claim, complaint, or action against any of the Released Parties in any forum or form, other than the Action, and that Plaintiff presently is not a party to any claim, complaint, or action against any of the Released Parties in any forum or form, other than the Action.

(b) Plaintiff affirms that Plaintiff has been reimbursed for all expenses necessarily incurred by Plaintiff in following Defendant's directions or incurred in performing Plaintiff's duties during Plaintiff's employment with Defendant.

(c) Plaintiff further affirms that Plaintiff has no known workplace injuries or occupational diseases and that Plaintiff has been granted or has not been denied any leave to which Plaintiff was entitled under the Family and Medical Leave Act, the California Family Rights Act, or disability accommodation laws, except as alleged in the Action and which claims are expressly released in Section 7(a) above.

(d) Plaintiff affirms that as of the date Plaintiff signs this Settlement Agreement, Plaintiff is not Medicare eligible (*i.e.*, is not 65 years of age or older; is not suffering from end-stage renal failure; has not received Social Security Disability Insurance benefits for 24 months or longer, *etc.*). Nonetheless, if the Centers for Medicare & Medicaid Services (the "CMS") (this term includes any related agency representing Medicare's interests) determines that Medicare has an interest in the payment to Plaintiff under this Settlement Agreement, Plaintiff agrees to indemnify, defend, and hold the Released Parties harmless from any action by the CMS relating to medical expenses of Plaintiff. Plaintiff agrees to reasonably cooperate with the Released Parties upon request with respect to any information needed to satisfy the reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim the CMS may make and for which Plaintiff is required to indemnify the Released Parties under this Section. Further, Plaintiff agrees to waive any and all future actions against the Released Parties for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A).

9. Limited Disclosure.

(a) Plaintiff agrees that Plaintiff will not publicize or disclose or cause or knowingly permit or authorize the publicizing or disclosure of the fact of this Settlement Agreement, the contents of this Settlement Agreement, including the amount paid in settlement, or of the negotiations leading up to this Settlement Agreement, or of the basis for any claims or allegations which were or could have been made against the Released Parties which concern and are within the scope of this Settlement Agreement (hereafter collectively referred to as "Confidential Information") to any person, firm, organization, or entity of any and every type, public or private, for any reason, at any time, without the prior written consent of Defendant unless otherwise compelled by operation of law. The Parties acknowledge their intention that the provisions of this Section 9 create no liability for disclosures made: (i) prior to April 13, 2021; (ii) by persons from public information released prior to Plaintiff's execution of this Settlement Agreement; (iii) pursuant to Sections 15(b) or 15(c) below to enforce the terms of this Settlement Agreement; or (iv) as otherwise compelled by operation of law. Plaintiff and Plaintiff's Counsel further acknowledge that no disclosures shall be made to any publication, listserve or reporting service regarding settlements and verdicts.

(b) Nothing in this Settlement Agreement prohibits or prevents Plaintiff from disclosing factual information related to any of the following: (i) an act of sexual harassment, as defined in Civil Code section 51.9; or (ii) an act of workplace harassment or discrimination based on sex, or failure to prevent an act of workplace harassment or discrimination based on sex or an act of retaliation against a person for reporting harassment or discrimination based on sex, as described in Government Code sections 12940(h), (i), (j), and (k).

(c) The foregoing notwithstanding, Plaintiff and Plaintiff's Counsel acknowledge the confidentiality provisions of this Section 9 constitute a material inducement to Defendant to enter into this Settlement Agreement.

(d) Notwithstanding Section 9(a), Plaintiff is permitted to disclose Confidential Information to Plaintiff's spouse, tax advisors, and attorneys with whom Plaintiff chooses to consult regarding Plaintiff's consideration of this Settlement Agreement and the tax and legal implications for Plaintiff thereof. However, each such person to whom Plaintiff discloses Confidential Information shall be bound to the confidentiality provisions hereof and any disclosure of Confidential Information by any such person so informed shall constitute a breach by Plaintiff of Section 9(a) above. Plaintiff also is permitted to disclose Confidential

Information to any federal, state, or local government agency. In response to inquiries from third parties concerning the status of this dispute or which would require the disclosure of Confidential Information, Plaintiff and Plaintiff's Counsel only will state that the dispute between Plaintiff and Defendant has been resolved.

10. Non-Disparagement. Plaintiff agrees that he has not and will not, directly or indirectly, make or publish any statement or communication in any form or nature, whether oral or written, publicly or privately, specifically including without limitation on any website, web posting or internet blog site, or social media platform, which is intended to or otherwise would have the natural tendency to damage, malign, disparage or defame the name, business, or reputation of Defendant Bigge Crane & Rigging Company, including its directors, executive officers, and shareholders.

11. Return of Company Property/Information; Pre-Existing Agreements.

(a) Within thirty (30) calendar days of Plaintiff's execution of this Settlement Agreement, Plaintiff will return all of Defendant's documents and property currently in Plaintiff's possession (if any) including, but without limitation, any and all services work, notes, reports, files, memoranda, records, cardkey passes, door and file keys, safe combinations, laptop computer, computer access codes, disks and instructional or personnel manuals, and other physical or personal property that Plaintiff received or prepared or helped to prepare in connection with Plaintiff's employment with Defendant ("Company Property"). Plaintiff's Counsel shall cooperate with Defendant's Counsel to arrange for no-contact pick-up of any Company Property, including that produced in discovery in the Action, at a location and on a date mutually convenient.

(b) Plaintiff acknowledges and agrees that in the course of Plaintiff's employment with Defendant, Plaintiff has acquired: (i) confidential information including without limitation information received by Defendant from third-parties, under confidential conditions; (ii) other technical, product, business, financial, or development information from Defendant, the use or disclosure of which reasonably might be construed to be contrary to the interest of Defendant; or (iii) any other proprietary information or data, including but not limited to customer lists, which Plaintiff may have acquired during Plaintiff's employment (hereafter collectively referred to as "Company Information"). Plaintiff understands and agrees that such Company Information was disclosed to Plaintiff in confidence and for use only by Defendant. Plaintiff understands and agrees that Plaintiff: (i) will keep such Company Information confidential at all times, (ii) will not disclose or communicate Company Information to any third-party, and (iii) will not make use of Company Information on Plaintiff's own behalf, or on behalf of any third-party. In view of the nature of Plaintiff's employment and the nature of Company Information Plaintiff received during the course of Plaintiff's employment, Plaintiff agrees that any unauthorized disclosure to third-parties of Company Information or other violation, or threatened violation, of this Settlement Agreement would cause irreparable damage to the confidential or trade secret status of Company Information and to Defendant, and that, therefore, Defendant, and each person constituting Defendant hereunder, shall be entitled to an injunction prohibiting Plaintiff from any such disclosure, attempted disclosure, violation, or threatened violation.

12. Job References. Plaintiff shall direct all individuals inquiring about Plaintiff's employment with Defendant to Defendant's Human Resources Department, which will follow Defendant's policy by responding with only Plaintiff's last position and dates of employment, except that this provision shall not apply to any request from a prospective employer who provides a release signed by Plaintiff pursuant to the Fair Credit Reporting Act or any state counterpart.

13. No Transfer/Assignment of Claims. Plaintiff warrants and represents that Plaintiff has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of or any interest in any claim released under this Settlement Agreement. Plaintiff and Plaintiff's Counsel agree that they solely are responsible for the satisfaction of any assignment or lien to any lien holder and will indemnify and hold the Released Parties harmless against any liens, damages, penalties, fines, fees, assessments, taxes, or attorneys' fees that may be imposed against or incurred by any of the Released Parties as a result of the actions of any lien holder or any lien Plaintiff or any taxing authority or any court in relation to any interest which any third-party may have in any claim which Plaintiff is releasing under this Settlement Agreement or any interest in any of the proceeds paid to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

14. Liens and Attorneys' Fees/Indemnification.

(a) Plaintiff acknowledges Plaintiff solely is responsible for any liens made in connection with any services performed on Plaintiff's behalf by any attorney, consultants, expert witnesses, or healthcare providers. Each Party solely is responsible for any fees and costs he, she, or it has incurred including, but not limited to, fees for attorneys, consultants, mediators, and expert witnesses. Despite the fact a portion of the gross sum set forth in Section 3(a) above is being paid to Plaintiff's Counsel, Plaintiff acknowledges that none of the Released Parties are responsible for the payment of any fees incurred on behalf of Plaintiff in connection with the prosecution of the Action.

(b) Plaintiff acknowledges and agrees that Plaintiff will indemnify the Released Parties for any and all costs any of them incur as a result of any claims made by any attorneys, consultants, expert witnesses, healthcare providers, or other third-parties to recover monies from the amounts payable to Plaintiff or Plaintiff's Counsel under this Settlement Agreement.

15. Governing Law and Interpretation.

(a) This Settlement Agreement shall be governed and conformed in accordance with the laws of the State of California provided, however, that parol evidence shall not be admissible to alter, vary, or supplement the term of this Settlement Agreement. Should any provision of this Settlement Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision immediately shall become null and void, leaving the remainder of this Settlement Agreement in full force and effect.

(b) In the event of a breach of any provision of this Settlement Agreement, any Party may institute an action specifically to enforce any term or terms of this Settlement Agreement or seek damages for breach. However, the Party instituting such an action must take steps to file this Settlement Agreement or any documents setting forth the terms of this Settlement Agreement with the court under seal. In an action to enforce any term or terms of this Settlement Agreement or to seek damages for breach of this Settlement Agreement, the prevailing party in that action shall be entitled to recover reasonable attorney's fees.

(c) It is the intent of the Parties, pursuant to Evidence Code sections 1122(a)(1) and 1123, that all of the terms of this Settlement Agreement shall be admissible and may be disclosed under seal to a court of law and shall be enforceable and binding upon them in a court of law.

(d) Any dispute concerning the this Settlement Agreement shall be enforced through California Code of Civil Procedure Section 664.6.

16. Amendment. This Settlement Agreement may not be modified, altered, or changed except in writing and signed by both Parties wherein specific reference is made to this Settlement Agreement.

17. Miscellaneous.

(a) This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which, taken together shall constitute the same instrument. An electronic or digital signature made on a faxed or electronically mailed copy of the Settlement Agreement, or a signature transmitted by facsimile or electronic mail shall have the same effect as the original signature.

(b) The section headings used in this Settlement Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify, or otherwise be used in the interpretation of any of the provisions hereof.

(c) This Settlement Agreement was the result of negotiations between the Parties and their respective counsel. In the event of vagueness, ambiguity, or uncertainty, this Settlement Agreement shall not be construed against the Party preparing it, but shall be construed as if both Parties prepared it jointly.

(d) If a Party fails to enforce this Settlement Agreement or to insist on performance of any term, that failure does not mean a waiver of that term or of the Settlement Agreement and the Settlement Agreement remains in full force and effect.

18. Entire Agreement. This Settlement Agreement sets forth the entire agreement between the Parties, and fully supersedes any prior agreements or understandings between the Parties. Plaintiff acknowledges that Plaintiff has not relied on any representations, promises, or agreements of any kind made to Plaintiff in connection with Plaintiff's decision to accept this Settlement Agreement, except for those set forth in this Settlement Agreement.

HAVING ELECTED TO EXECUTE THIS SETTLEMENT AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE CONSIDERATION SET FORTH IN SECTION 3(a) ABOVE, PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS SETTLEMENT AGREEMENT INTENDING TO WAIVE, SETTLE, AND RELEASE ALL CLAIMS PLAINTIFF HAS OR MIGHT HAVE AGAINST THE RELEASED PARTIES AS OF THE DATE OF EXECUTION OF THIS SETTLEMENT AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement as of the date set forth below:

Executed on June 8, 2021

Michael Kant

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Executed on June 11, 2021

DocuSigned by:
Thomas E Bostrom
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Printed Name: Thomas Bostrom
Title: Senior Vice President
For: Bigge Crane and Rigging Co.

Approved as to form and content:

Executed on June 8, 2021

Joseph Clapp, Esq.
Aiman-Smith & Marcy
Attorneys for Plaintiff MICHAEL KANT

Approved as to form and content:

Executed on June ____, 2021

Candice Jackson
Freeman Mathis & Gary, LLP
Attorneys for Defendant
BIGGE CRANE AND RIGGING CO.

EXHIBIT A

ADDENDUM TO RELEASE OF ALL CLAIMS

I, (hereinafter referred to as "Plaintiff"), individually and on behalf of Plaintiff's heirs, executors, administrators and assigns, as additional consideration for the settlement agreement referenced in the SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS to which this ADDENDUM is attached and of which this ADDENDUM is a part (hereinafter referred to as "the Settlement Agreement"), further recite, warrant, represent and agree as follows:

Plaintiff understands, acknowledges and agrees that:

1. In reaching the settlement agreement, the parties have given considerable attention to whether Plaintiff is entitled to Social Security disability benefits pursuant to 42 U.S.C. § 423. It is not the intention of any party to the settlement agreement to shift to Medicare responsibility for payment of medical expenses for the treatment of the injuries that Plaintiff sustained as result of the incident referenced in the settlement agreement (hereinafter referred to as "the incident"). However, the settlement agreement is intended to foreclose the released parties from responsibility for future payments of any medical expenses and prescription drug expenses related to the incident and Plaintiff's injuries that Plaintiff sustained as a result of the incident.

2. The released parties have expressly denied all liability for any damages as a result of the incident and dispute the reasonableness and necessity of past and future medical treatment and expenses allegedly incurred regarding Plaintiff's injuries resulting from the incident.

3. Because Plaintiff's injuries resulting from the incident were sustained on or after December 5, 1980, the sections of the Social Security Act known as the Medicare Secondary Payer ("MSP") law (42 U.S.C. Section 1395y[b]) and federal regulations adopted by the federal government to implement this law (including 42 C.F.R. Part 411) have been considered by the parties. These laws and regulations are collectively referred to herein as the "MSP provisions." Detailed information regarding the MSP provisions is available at the Centers for Medicare & Medicaid Services website at http://www.cms.hhs.gov/; a summary of the Medicare Secondary Payer Recovery Claim Process is available at http://www.cms.hhs.gov/MSPRecovClaimPro/.

4. Pursuant to the MSP provisions, Medicare is not required to make and does not make payment for covered items or services to the extent that payment has been made, or can reasonably be expected to be made, under a liability insurance policy or plan. Liability insurance means insurance (including a self-insured plan) that provides payment based on legal liability for injury or illness or damage to property, and includes, but is not limited to, automobile liability insurance, uninsured motorist insurance, underinsured motorist insurance, homeowners' liability insurance, malpractice insurance, product liability insurance, and general casualty insurance.

5. However, pursuant to the MSP provisions, under certain circumstances, Medicare may make conditional payments which are conditioned on reimbursement to Medicare to the extent that payment with respect to the same items or services could have been made under

a liability insurance policy or plan. These conditional payments are subject to later recovery by Medicare if there is a settlement, judgment, award or other payment.

6. Regarding these conditional payments, Medicare has a statutory direct right of recovery, a right that takes precedence over the claims of any other party, from anyone, including but not limited to the Medicare beneficiary, who receives payment directly or indirectly from the proceeds of a liability insurance payment, as well as from the liability insurer or plan making the payment. A failure to fully comply with the MSP provisions can result in a recovery action by Medicare seeking reimbursement of Medicare payments that Medicare was not required to make and penalties. 42 C.F.R. §411.24.

7. It is the understanding of the parties that the MSP provisions do not apply, and that compliance with these provisions is not required, regarding Plaintiff's claim for injuries which is the subject of the settlement agreement as Plaintiff has expressly represented and warranted, and hereby again expressly represents and warrants, that:

   a. Medicare has made no conditional payments for any medical expense or prescription drug expense related to Plaintiff's injuries sustained in the incident.

   b. Plaintiff is not, nor has Plaintiff ever been, a Medicare beneficiary.

   c. Plaintiff is not currently receiving Social Security Disability Benefits.

   d. Plaintiff has not applied for Social Security Disability Benefits.

   e. Plaintiff has not been denied Social Security Disability Benefits.

   f. Plaintiff has not appealed from a denial of Social Security Disability Benefits.

   g. Plaintiff is not in End Stage Renal Failure.

   h. Plaintiff does not expect to become eligible for Medicare benefits within the next 30 months.

   i. No liens, including but not limited to liens for medical treatment by hospitals, physicians, or medical providers or suppliers of any kind, have been filed regarding the treatment of Plaintiff's injuries sustained as a result of the incident.

8. Plaintiff is aware that each liability insurer paying the settlement is relying on Plaintiff's representations and warranties stated in Paragraph 7, and each of them, and that each

such insurer reasonably expects that each such representation and warranty by Plaintiff is true.

Plaintiff is of sound mind and body and fully capable of reading and understanding this ADDENDUM. Plaintiff understands the consequences of Plaintiff's failure to comply with the MSP provisions referenced in this ADDENDUM.

Done in alameda County, of California this 8 day of the month June in the year 2021.

MICHAEL KANT