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Attorneys for Defendants,
 AMERICAN TECHNOLOGIES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

Juan Gustavo Flores, Jose Angel Solis Lugo,
 on behalf of themselves and all others
 similarly situated, and on behalf of the general
 public,

Plaintiff,

vs.

American Technologies, Inc., a California
 Corporation, and DOES 1 through 10,
 inclusive.

Defendants.

Case No.

PRIVATE ATTORNEYS GENERAL ACT STIPULATION OF SETTLEMENT AGREEMENT AND RELEASE

PAGA Complaint Filed: January 20, 2020

PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE

This Private Attorneys General Act Settlement Agreement and Release ("Stipulation of Settlement") is made and entered into by and between Juan Gustavo Flores, Jose Angel Solis Lugo, on behalf of themselves and all others similarly situated, and the State of California, ("Plaintiff" or the "PAGA Employees") and AMERICAN TECHNOLOGIES, INC. ("Defendants" or "DEFENDANT"). Plaintiffs and Defendant are collectively referred to herein as the "Parties" and

1 may be individually referred to as a "Party." This Stipulation of Settlement is made in consideration
2 of the following facts:

3 **A. WHEREAS**, Plaintiffs intend to file the representative action entitled Juan Gustavo
4 Flores, Jose Angel Solis Lugo, on behalf of themselves and all others similarly situated v.
5 *AMERICAN TECHNOLOGIES, Inc.*, alleging PAGA violations as set forth in Plaintiffs' PAGA
6 letters pursuant to Labor Code § 2698 *et seq.* ("PAGA") for alleged violations of Industrial Welfare
7 Commission Wage Order and Labor Code §§ 510, 1194, 1194.2, §§ 226.7, § 558, § 226(a)(e), §§
8 201-203, § 2802, § 512, §204(a)(b).(the "Lawsuit"). Plaintiffs exhausted their administrative
9 remedies under PAGA by giving notice to the Labor & Workforce Development Agency ("LWDA")
10 of the alleged Labor Code violations and the facts and theories to support such violations.
11 DEFENDANT denies all of the allegations in the Lawsuit and in the LWDA notice, and denies that
12 it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other
13 actionable conduct.

14 **B. WHEREAS**, the Parties understand, acknowledge, and agree that this Stipulation of
15 Settlement constitutes a compromise of the claims asserted in the Lawsuit and that it is the desire
16 and intention of the Parties to effect a final and complete resolution of such claims that Plaintiff, the
17 State, and all aggrieved employees have against DEFENDANT arising under PAGA. The Parties
18 further acknowledge that this Stipulation of Settlement is a negotiated compromise between them,
19 and that it is intended to settle all disputes, including any *bona fide* dispute between the Parties
20 regarding whether the PAGA Class was entitled to any amounts that they had not been paid prior to
21 entry into this Stipulation of Settlement.

22 **C. WHEREAS**, following a mediation with Tripper Ortman on May 15, 2020, the Parties
23 believe and agree that this Stipulation of Settlement provides for a fair, adequate, and reasonable
24 resolution of the Representative PAGA Claim, and have arrived at the settlement in extensive, arms-
25 length negotiations, taking into account all relevant factors, present and potential.

26 **D. WHEREAS**, California Labor Code section 2699(1)(2) requires Court approval of a
27 settlement of any action filed under PAGA.
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1 **E. WHEREAS**, upon entry of the Court's final order approving this settlement, Plaintiffs,
2 the State, and any and all current and former non-exempt employees of Defendant during the PAGA
3 Period ("PAGA Employees"), hereby release Defendant and its present and former officers,
4 directors, members, managers, shareholders, agents, parents, subsidiaries, affiliates, employees,
5 insurers, operators, partners, joint ventures, consultants, attorneys, successors or assigns (all of the
6 foregoing are referred to as the "Releasees"), from violations of the California Labor Codes which
7 are alleged in the PAGA letters filed by Plaintiffs, brought under the Private Attorneys General Act
8 of 2004 (hereinafter referred to as the "Released Claims"). Plaintiffs further release Defendant from
9 the underlying Labor Code violations.

10 Execution of this Settlement by the Plaintiff (which includes any heirs, successors, assigns
11 and relatives by blood or marriage, of Plaintiff) is intended to effect a release by each PAGA
12 Employee of Defendants during the period of January 31, 2019 to final approval of the PAGA
13 Settlement (hereinafter called the "PAGA Period") and is intended to include PAGA claims that
14 were in the PAGA letters submitted by Plaintiffs, as well as any claim for fees or costs, which shall
15 be paid solely from the common fund created by this settlement.

16 **F. WHEREAS**, The Lawsuit will be dismissed with prejudice upon entry of an order by the
17 Court approving the settlement, although the Court will retain jurisdiction of the case pursuant to
18 CCP § 664.6 to enforce the terms of this Agreement and approval order.

19 **G. THEREFORE**, in consideration of the promises and agreements contained herein, the
20 Parties agree and covenant as follows:

21 1. **EFFECTIVE DATE**: The effective date shall be the date the Court enters the order
22 approving this Stipulation of Settlement. ("Effective Date").

23 2. **RELEASE**: Upon entry of an Order approving the Settlement, all PAGA Employees will
24 release any and all facts and claims asserted in the PAGA Claim or any other claims, under PAGA,
25 that could have been asserted in Flores and Lugo's PAGA Claim (including Labor Code Section
26 558), based on the facts alleged, including but not limited to any and all claims for PAGA penalties
27 for violations of the California Labor Code governing: meal and rest breaks; unpaid minimum
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1 wages, overtime and double time wages; wage statement violations and separation pay
2 violations. Specifically, the Released Claims are claims for civil penalties under PAGA for
3 violations of Labor Code §§ 200, 201, 202, 203, 204, 226 et seq., 226.3, 226.7, 510, 558 (a 1-2),
4 1174, 1194, 1194.2, 1197, 1197.1, and 1199 ("Released Claims").3. The Parties agree and
5 acknowledge that, to the maximum extent permitted by law, the final order entered pursuant to this
6 settlement will bind all those who would be bound by a judgment if the action had been brought by
7 the California Labor & Workforce Development Agency ("LWDA"), including Flores and Lugo,
8 the LWDA, and the PAGA Employees, with respect to the recovery of civil penalties asserted in the
9 PAGA Claim against the Released Parties.

10 3. IRS 1099: With regard to settlement payments to PAGA Employees and Plaintiffs, IRS
11 Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding
12 federal, state, and/or local tax obligations. Plaintiffs acknowledge that they have obtained no tax
13 advice from ATI and that neither ATI nor its attorneys have made any representation concerning
14 the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be
15 made pursuant to this Agreement.

16 4. NOTICE

17 a. No later than ten (10) days after the effective date, Defendants shall provide the Claims
18 Administrator ("Simpluris, Inc.") with a list of all non-exempt employees employed during
19 the PAGA Period (the "PAGA List"). The PAGA List shall state the employee's first name
20 and last name, the last known home address for each such employee, each employee's social
21 security number, and each employee's respective number of itemized wage statements
22 issued to said employee by Defendants during the PAGA Period. For the purposes of this
23 settlement, the non-exempt employees shall only include one location: Hayward Location,
24 including those employees servicing the Hayward/San Francisco/San Jose area.. Defendant
25 estimates that the total number of workweeks in both locations is: 5286. Should this number
26 go up by more than ten (10) percent before the Court's approval, the settlement amount will
27 be subject to a pro rata increase, or at ATI's option, the PAGA Period will be reduced to the
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1 date upon which the number of workweeks reach 10% more than 5286 workweeks

2 b. All costs incurred by the Claims Administrator in connection with the current settlement,
3 including mailing of the Notice of PAGA Settlement, whether foreseen or not, shall be paid
4 out of the settlement sum agreed to as described below.

5 5. GENERAL RELEASE BY LUGO. In light of the separate consideration in the form of the
6 PAGA Service Award that Lugo will receive, and in addition to the claims asserted in the PAGA
7 Claim, Lugo has agreed to release any and all claims, whether known or unknown, under federal
8 law or state law, including but not limited to any claims for discrimination, failure to accommodate,
9 retaliation, wrongful termination, claims arising under the California Labor Code, IWC Wage
10 Orders, Fair Employment and Housing Act, California Family Rights Act, Family Medical Leave
11 Act, Americans with Disabilities Act, or any claim asserted or that may have been asserted in the
12 PAGA Claim or otherwise, against American Technologies, Inc., and/or any of the Released Parties,
13 and/or in connection with their employment with American Technologies, Inc. or the cessation
14 thereof ("Lugo's Individually Released Claims").

15 Lugo understands that this release includes unknown claims and that she is, as a result,
16 waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which
17 provides:

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

24 Lugo also acknowledges that he may hereafter discover facts different from or in addition to
25 those Lugo knows or now believes to be true with respect to Lugo's Individually Released Claims
26 or described in this Agreement, and Lugo agrees that the releases and agreements contained herein
27 shall be and will remain effective in all respects notwithstanding any later discovery of any such
28 different or additional facts. Lugo hereby assumes any and all risk of any mistake in connection
with the true facts involved in the matters, disputes, or controversies described herein or with regard
to any facts which are now unknown to Lugo relating thereto. Lugo warrants and represents that he
has not heretofore assigned or transferred to any person not a party to this Agreement any released
matter or any part or portion thereof and Lugo shall defend, indemnify, and hold harmless the

Released Parties from and against any claim (including the payment of attorneys' fees and costs actually incurred whether or not litigation is commenced) based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

6. PAGA SETTLEMENT PAYMENT PROCEDURES:

a. In exchange for the dismissal of the Lawsuit and Plaintiff's release pursuant to California Labor Code § 2699 For Violations of Labor Code Sections as alleged in the Lawsuit, *et. seq.* (including PAGA penalties payable in part to the State of California) against the Released Parties, DEFENDANT, agrees to pay, in accordance with the terms specified below, the total gross sum of \$225,000.00 (the "Settlement Sum") to Plaintiffs to be apportioned as set forth herein.

(i) ATTORNEYS' FEES: An award to Plaintiff's Counsel of attorneys' fees will be subtracted from the PAGA Fund in an amount to be set by the Court taking into account the settlement award that has been made available for the PAGA employees by the efforts of Plaintiff's Counsel. The amount awarded shall not exceed 33.33%. Court approval of the settlement shall not be contingent on the Court's approval of attorney's fees. Defendant agrees not to dispute or otherwise object to Plaintiff's request for attorney's fees in an amount not to exceed 33.33% of the Settlement Sum.

(ii) SERVICE PAYMENT TO PLAINTIFF: The amount awarded to Plaintiff Flores, as a service payment will be set by the Court in its discretion, not to exceed five thousand dollars (\$5,000.00). This amount will be deducted from the PAGA Fund. Should the Court approve a lesser amount, the un-awarded amount shall remain in the PAGA Fund. The amount awarded to Plaintiff Lugo, as a service payment will be set by the Court in its discretion, not to exceed five thousand dollars (\$5,000.00). An IRS Form 1099 will be issued to each Class Representative for their service payment. Defendant agrees not to dispute or otherwise object to the Service Payment if Plaintiffs request \$5,000.00.

(iii) ATTORNEYS' COSTS AND EXPENSES: Plaintiff's Counsel will be reimbursed from the PAGA Fund in an amount to be set by the Court for documented

1 out-of-pocket litigation costs and expenses, not to exceed fifteen thousand
2 (\$15,000.00). Defendant agrees not to object or dispute costs in an amount of up to
3 \$15,000.00 for Plaintiff's Counsel's costs.

4 (iv) CLAIMS ADMINISTRATOR PAYMENT: The Claims Administrator's
5 payment will be subtracted from the PAGA Fund in an amount to be set by the Court,
6 not to exceed Ten Thousand Dollars (\$10,000.00) of the PAGA Fund.

7 (v) PAYMENT TO PAGA EMPLOYEES: After deducting Plaintiffs' attorney's fees
8 and costs, the Service Payments and the Claims Administrator payment from the
9 PAGA Fund, 25% of the remaining funds shall be paid and distributed by the Claims
10 Administrator to PAGA Employees (hereinafter called the "PAGA Employee
11 Fund"). The PAGA Employee Fund shall be paid as follows: such payment to PAGA
12 Employees shall be paid no later than fifteen (15) days following the Effective Date
13 in accordance with the following formula: Each PAGA Employee shall receive a
14 *pro rata* share of the amount of the PAGA Employee Fund. The pro-rata share for
15 each PAGA Employee shall be calculated by dividing the PAGA Employee's
16 number of pay periods worked during the PAGA Period by the total number pay
17 periods worked by all PAGA Employees and multiplying that ratio by the total
18 amount in the PAGA Employee Fund.

19 (vi) After deducting Plaintiff's attorney's fees and costs, the Service Payments and
20 the Claims Administrator payment from the PAGA Fund, 75% of the remaining funds
21 shall be paid and distributed by the Claims Administrator to the LWDA (hereinafter
22 called the "LWDA Payment").

23 (vii) Settlement Checks issued to PAGA Employees pursuant to this Stipulation of
24 Settlement will expire one hundred and twenty (120) days from the date they are
25 issued by the Claims Administrator. Any unclaimed funds after the one hundred and
26 twenty (120) day period shall be paid to the State's unclaimed property fund.

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1 7. COURT APPROVAL: Should the Court not approve this Stipulation of Settlement, the
2 Parties shall request leave and work jointly to attempt to remedy the Stipulation of Settlement in
3 order to obtain the Court's approval. If despite the Parties best efforts, the Court still does not
4 approve the Stipulation of Settlement, the Settlement shall become null and void and have no force
5 and effect. Within 15 days after the Court enters the order approving the settlement, Defendants
6 shall transmit the funds to the Claims Administrator in the amount of the PAGA Fund. The parties
7 will jointly submit an order to be entered by the Court to enforce this Stipulation of Settlement, the
8 Order granting approval of the PAGA payments, and dismissing the Lawsuit with prejudice. The
9 Final Dismissal Order will be submitted concurrently with the documents asking the Court to
10 approve the settlement.

11 8. REPRESENTATIONS AND WARRANTIES: In further consideration for payment of
12 the PAGA settlement amounts, Plaintiff represents and warrants that they have the right and
13 exclusive authority to execute this Stipulation of Settlement. Each Party to this Stipulation of
14 Settlement also represents and warrants to, and agrees with, each other Party hereto as follows:

15 8.1. Each Party has carefully read, and knows and understands the full contents of this
16 Stipulation of Settlement and is voluntarily entering into this Stipulation of Settlement
17 after having received independent legal advice from his or its attorneys with respect to
18 the advisability of making the settlement provided for herein and the advisability of
19 executing this Stipulation of Settlement.

20 8.2. In executing this Stipulation of Settlement and in making the settlement provided
21 for herein, no Party relies or has relied on any statement, representation, omission,
22 inducement, or promise of any other Party (or any officer, agent, employee,
23 representative, or attorney for any other Party), except as expressly stated in this
24 Stipulation of Settlement.

25 8.3. Each Party to this Stipulation of Settlement has investigated the facts relevant to this
26 settlement and this Stipulation of Settlement, and all matters pertaining thereto, to the
27 full extent that each Party deems necessary.
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1 8.4. Each separately-numbered term of this Stipulation of Settlement is contractual, not
2 merely a recital.

3 8.5. Each of the Parties has participated in the drafting of all provisions of this Stipulation
4 of Settlement, has had an adequate opportunity to read, review, and consider the effect
5 of the language of this Stipulation of Settlement, and has agreed to its terms.

6 9. CONFIDENTIALTY: Plaintiffs and Plaintiffs' Counsel agree that they have not and will not
7 publish the Stipulation of Settlement. In response to any inquiries they will state that "the case was resolved
8 with Court approval;" Plaintiffs' Counsel shall not report the Settlement or its content in any medium or in
9 any publication, shall not post or report anything regarding the claims of Plaintiffs or the PAGA Employees
10 on their website, and shall not contact any reporters or media regarding the Settlement, the PAGA Claims,
11 or their content. However, Plaintiffs' Counsel is authorized to make a limited disclosure to the Court and the
12 LWDA for the purposes of obtaining the approval of the settlement. This disclosure is limited to court filings
13 and electronic submission of settlement documents to the LWDA. Plaintiffs and Plaintiffs' counsel, or their
14 representatives, are not permitted to disseminate or publish, distribute or discuss the information provided to
15 the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered
16 otherwise by the Court.

17 10. CHOICE OF LAW: The rights and obligations of the Parties under this Stipulation of
18 Settlement shall be construed and enforced in accordance with, and governed by, the laws of the
19 State of California. California law shall govern the interpretation of this Stipulation of Settlement
20 even if a choice of law analysis under state or federal law would dictate that another forum's law be
21 applied.

22 11. COOPERATION: Each Party agrees that they will abide by this Stipulation of Settlement
23 and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably
24 required to carry out the stated objectives of this Stipulation of Settlement.

25 12. SEVERANCE: If any provision of this Stipulation of Settlement is held to be invalid by
26 a court of competent jurisdiction, that provision shall be deemed severed and deleted from this
27 Stipulation of Settlement, and neither that provision nor its severance and deletion shall affect the
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1 validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release
2 contained herein may be deemed severed or deleted from this Stipulation of Settlement, except upon
3 waiver in writing by the applicable Released Party.

4 13. NON-ADMISSION OF WRONGDOING: The Parties agree that this Stipulation of
5 Settlement does not constitute an admission of Defendant or any Released Party, of any of the
6 matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local law,
7 ordinance or regulation, or of any violation of any policy or procedure, or of any liability or
8 wrongdoing whatsoever. Neither this Stipulation of Settlement nor anything in this Stipulation of
9 Settlement shall be construed to be or shall be admissible in any proceeding as evidence of liability
10 or wrongdoing the Parties, subsidiaries, divisions, affiliated corporations, trustees, directors,
11 officers, shareholders, agents, attorneys, insurers, or employees.

12 14. ADDITIONAL TERMS:

13 14.1 This Stipulation of Settlement is binding upon and shall inure to the benefit of, the
14 Parties hereto and their respective agents, employees, representatives, officers, directors,
15 parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors
16 in interest.

17 14.2 Given that all Parties hereto had the opportunity to draft, review, and edit the
18 language of this Stipulation of Settlement, no presumption for or against any Party
19 arising out of drafting all or any part of this Stipulation of Settlement may be applied in
20 any action relating to, connected to, or involving this Stipulation of Settlement.
21 Accordingly, the Parties hereby waive the benefit of any legal principle or rule providing
22 that, in cases of uncertainty, the language of a contract should be interpreted against the
23 Party who caused the uncertainty to exist.

24 14.3 This Stipulation of Settlement may be executed in counterparts. A signature by way
25 of e-mail, facsimile, or Doc-u-Sign shall serve as an original for all purposes.

26 14.4 Headings in this Stipulation of Settlement are included solely for convenience and
27 shall not control the meaning or interpretation of any provision of this Stipulation of
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1 Settlement.

2 15. ENTIRE AGREEMENT: This Stipulation of Settlement sets forth the entire agreement
3 between the Parties hereto and fully supersedes any and all prior and/or supplemental
4 understandings, whether written or oral, between the Parties concerning the subject matter of this
5 Stipulation of Settlement. Plaintiff acknowledged that she has not relied on any representations,
6 promises or agreements of any kind made to them in connection with their decision to accept the
7 terms of this Stipulation of Settlement, except for the representations, promises, and agreements
8 herein. Any modification to this Stipulation of Settlement must be in writing and signed by Plaintiffs
9 and an authorized officer of Defendants.

10 IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private
11 Attorneys General Act Settlement Agreement and Release as of the date set forth below.

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13 Dated: _____, 2020

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16 Dated: 5/15/2020 _____, 2020

Plaintiff Juan Flores, on behalf of himself and
all others similarly situated, and on behalf of
the general public and the State of California

DocuSigned by:



Plaintiff José Solis Lugo, on behalf of himself
and all others similarly situated, and on behalf
of the general public and the State of California

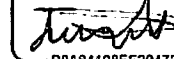
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6 promises or agreements of any kind made to them in connection with their decision to accept the
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12
13 Dated: 5/15/2020, 2020

DocuSigned by:



Plaintiff Juan Flores, on behalf of himself and
all others similarly situated, and on behalf of
the general public and the State of California

14
15
16 Dated: _____, 2020

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18 Plaintiff Jose Solis Lugo, on behalf of himself
19 and all others similarly situated, and on behalf
20 of the general public and the State of California

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Dated: 5-15, 2020

Y. J. Moore
Defendant American Technologies, Inc.

Approved as to form and content:

Dated: 5-18, 2020

OTKUPMAN LAW FIRM

~~ROMAN OTKUPMAN~~ Suan Flores and RD
Attorneys ~~NORMA GOMEZ~~, on behalf of Sore
herself and all others similarly situated, and on SDP
behalf of the general public

Dated: _____, 2020

Fisher & Phillips, LLP

Danielle Hultenius Moore
Attorneys for Defendants
AMERICAN TECHNOLOGIES, INC.