

1 BRUCE J. HIGHMAN, CBN 101760
Email: bruce.highman@highmanlaw.com
2 HIGHMAN & HIGHMAN
A Professional Law Association
3 582 Market Street, Suite 1212
San Francisco, CA 94104
4 Telephone: (415) 982-5563
Fax: (415) 982-5202
5 Email: bruce.highman@highmanlaw.com

6 Attorneys for Plaintiff

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

10 JONATHAN GERMAIN, an individual,
11 Plaintiff,
12 -v-
13 MICRO-TRACERS INC., a corporation;
14 ANRESCO, INCORPORATED, a
corporation; DAVID EISENBERG, an
15 individual; and DOES 1-10, inclusive,
16 Defendants.

No. CGC-20-585501

STIPULATION OF SETTLEMENT
OF PLAINTIFF JONATHAN
GERMAIN'S CLAIMS UNDER THE
CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT (PAGA)

17 **STIPULATION**

18 Plaintiff Jonathan Germain and Defendants Micro-Tracers, Inc., Anresco, Incorporated, and
19 David Eisenberg, (hereinafter collectively "the Parties") hereby stipulate:

20 1. Plaintiff Jonathan Germain's representative claims in the Second Amended Complaint
21 (SAC), which is the current operative complaint, under the Labor Code Private Attorneys General
22 Act (hereinafter "PAGA"), are settled for \$10,000 (ten thousand dollars). These claims are the
23 twelfth cause of action in the SAC. The other eleven causes of action are Germain's individual
24 claims and are being settled under a confidential settlement agreement.

25 2. *Labor Code § 2699, subdivision (I)*, of PAGA provides that 75 % of a PAGA settlement
26 shall be paid to the California Labor and Workforce Development Agency (LWDA) and 25% shall
27 be paid to the aggrieved employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the
28 \$_____ will be paid to the LWDA, and the remaining Twenty-Five Percent (25%), will be paid

1 to all persons who were employees of Micro-Tracers or Anresco at any time from April 6, 2019
2 through September 3, 2020 on a pro-rata basis based on the number of pay periods each person was
3 employed by Micro-Tracers or Anresco during the period from April 6, 2019 through September 3,
4 2020. Micro-Tracers and Anresco's business records shall have a rebuttable presumption of accuracy
5 as to the number of pay periods each person was employed by Micro-Tracers or Anresco during the
6 period from April 6, 2019 through September 3, 2020. No withholdings shall be made from these
7 payments. Each employee who receives a payment on the PAGA claim will be solely responsible
8 for paying any federal, state, or local taxes owed on the payment. The entirety of payments to the
9 LWDA and the employees on the PAGA claim will be treated as civil penalties for purposes of IRS
10 reporting. In addition to the payment to the LWDA and the employees to settle the PAGA
11 representative claim, Defendants will arrange for and pay any costs of distribution of the PAGA
12 funds. Defendants will pay the PAGA funds to the LWDA and the employees if the San Francisco
13 Superior Court approves the PAGA settlement and by February 28, 2021 unless this PAGA
14 settlement is otherwise voided.

15 2. The payment to the LWDA will be enclosed with a copy of the Court's Order approving
16 the PAGA settlement. The payments to the employees will be enclosed with a letter, the template
17 of which shall state:

18 Enclosed please find a check for \$ _____ which is your share of the settlement of a claim
19 brought by Jonathan Germain for civil penalties under the California Labor Code's Private
20 Attorneys General Act. You must cash this check within 180 days of the date of the check.
21 If you don't cash it within the 180 days, the check will be void, and the \$ _____ will escheat
22 to the State of California rather than going to you. If you have any questions as to the
23 reporting of this sum on your tax return, please ask the accountant or other tax professional
24 who helps you with your tax return. If you have any other questions regarding this payment,
25 you may call or email the attorney for Micro-Tracers and Anresco who is:

26 Jeffrey M. Curtiss
27 Attorney at Law
28 390 Bridge Parkway, Suite 200
Redwood City, CA 94065
Telephone: (650) 739-0200
Email: jeff@jcurtisslaw.com

Defendants will take reasonable steps to locate updated addresses and remail any settlement checks returned
as undeliverable. All settlement checks will be negotiable for 180 calendar days. Uncashed checks will
escheat to the State of California. Once Defendants have done everything required of them in paragraphs 1

1 and 2 of this stipulation, including but not limited to seeing that uncashed checks, if any, escheat to the State
2 of California, they shall file and serve a declaration under penalty of perjury setting forth their acts of
3 compliance.

4 3. This stipulation of settlement is contingent on the Court's approving it in 2020. If that does
5 not happen, then the settlement is void.

6 4. All persons employed by Micro-Tracers or Anresco at any time from April 6, 2019 through
7 September 3, 2020, including Germain, on behalf of themselves, and on behalf of all who claim by
8 and through them, or in their stead, hereby release, acquit, and discharge Defendants, including their
9 predecessors, successors, assigns, shareholders, owners, officers, directors, employees, agents,
10 trustees, attorneys, representatives, administrators, fiduciaries, beneficiaries, subrogees, and
11 executors from all claims asserted in the PAGA cause of action in the SAC that arose at any time
12 from April 6, 2019 through September 3, 2020 and all additional claims for penalties pursuant to
13 PAGA which may have been asserted arising from the facts or legal theories alleged in the PAGA
14 cause of action in the SAC in this Action that arose at any time from April 6, 2019 through
15 September 3, 2020. This release includes a waiver of the provisions, rights and benefits of Civil
16 Code § 1542 as to the claims released herein. Civil Code § 1542 reads:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
18 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
19 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.

20 PAGA Representative Group Members shall not have the right to opt out of or object to the PAGA
21 Settlement, which is binding upon the PAGA Representative Group Members.

22 5. The Parties hereto will not seek an award of attorneys' fees or costs from the Court in this
23 action.

24 6. Within five Court days after Defendants file and serve their declaration setting forth their
25 compliance with paragraphs 1 and 2 above, and provided Defendants have also complied with §§
26 1(B), 5, 6, and 11 of the confidential settlement agreement referenced in paragraph 1 above, Germain
27 shall file a request for dismissal of the entire action with prejudice.
28

1 7. A) This stipulation will be construed and enforced in accordance with, and governed
2 by, the laws of the State of California, without regard to its choice of law provisions. The San
3 Francisco Superior Court will adjudicate any dispute under this stipulation.

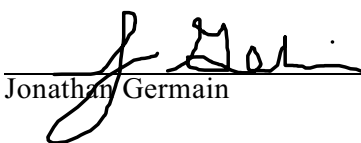
4 B) Defendants expressly deny any and all liability to Germain on his PAGA claim.
5 Nothing in this stipulation is intended to be, nor shall be deemed to be, an admission of liability
6 or wrongdoing, an admission of the existence of any facts upon which liability or wrongdoing
7 could be based, or a waiver of any defense to any such liability or wrongdoing.

8 C) This stipulation of settlement shall be binding upon the Parties hereto and upon
9 their heirs, administrators, representatives, executors, successors, and assigns, and shall inure
10 to the benefit of the Parties and each of them and to their heirs, administrators, representatives,
11 executors, successors, and assigns.

12 D) Neither Party shall be considered the drafter of this stipulation so as to give rise to
13 any presumption or convention regarding construction of this document. Any uncertainty or
14 ambiguity existing in this stipulation shall not be interpreted any Party as a result of the drafting
15 or the preparation of this stipulation.

16 E) The individuals and/or entities signing this Agreement and the Parties represent and
17 warrant that they have full and complete authority and authorization to execute and effect this
18 Stipulation of Settlement and to take or cause to be taken all acts contemplated by it. Each Party
19 represents, warrants, and acknowledges that this Stipulation shall be enforceable against each
20 Party according to its terms. This Stipulation may be enforced by either party hereto by a
21 motion under California Code of Civil Procedure section 664.6 or by any other procedure
22 permitted by law in the Superior Court of San Francisco, California.

23
24 DATED: November 25, 2020


Jonathan Germain

25
26 DATED: November ____, 2020

27 David Eisenberg on behalf of himself,
28 Micro-Tracers Inc., and
Anresco, Incorporated

1 7. A) This stipulation will be construed and enforced in accordance with, and governed
2 by, the laws of the State of California, without regard to its choice of law provisions. The San
3 Francisco Superior Court will adjudicate any dispute under this stipulation.

4 B) Defendants expressly deny any and all liability to Germain on his PAGA claim.
5 Nothing in this stipulation is intended to be, nor shall be deemed to be, an admission of liability
6 or wrongdoing, an admission of the existence of any facts upon which liability or wrongdoing
7 could be based, or a waiver of any defense to any such liability or wrongdoing.

8 C) This stipulation of settlement shall be binding upon the Parties hereto and upon
9 their heirs, administrators, representatives, executors, successors, and assigns, and shall inure
10 to the benefit of the Parties and each of them and to their heirs, administrators, representatives,
11 executors, successors, and assigns.

12 D) Neither Party shall be considered the drafter of this stipulation so as to give rise to
13 any presumption or convention regarding construction of this document. Any uncertainty or
14 ambiguity existing in this stipulation shall not be interpreted any Party as a result of the drafting
15 or the preparation of this stipulation.

16 E) The individuals and/or entities signing this Agreement and the Parties represent and
17 warrant that they have full and complete authority and authorization to execute and effect this
18 Stipulation of Settlement and to take or cause to be taken all acts contemplated by it. Each Party
19 represents, warrants, and acknowledges that this Stipulation shall be enforceable against each
20 Party according to its terms. This Stipulation may be enforced by either party hereto by a
21 motion under California Code of Civil Procedure section 664.6 or by any other procedure
22 permitted by law in the Superior Court of San Francisco, California.

23
24 DATED: November ____, 2020

Jonathan Germain

25
26 DATED: November 25th, 2020


27 David Eisenberg on behalf of himself,
28 Micro-Tracers Inc., and
Anresco, Incorporated