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 GLOBAL POWER GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CROSHEN KEITH WALTON, in a
 Representative capacity only, and on behalf of
 other members of the general public similarly
 situated,

Plaintiff,

vs.

GLOBAL POWER GROUP, INC.; a California
 corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2020-00044702-CU-OE-CTL

**Joint Stipulation of Representative Action
 Settlement and Release of Claims**

*[Assigned for All Purposes to the Hon.
 Kenneth J. Medel; Dept. C-66]*

Complaint Filed: December 4, 2020
 Case Management Conference: August 6, 2021
 Trial: TBD

This Joint Stipulation of Representative Action Settlement and Release of Claims ("Settlement" or "Agreement") is made and entered into by and between Plaintiff Croshen Walton ("Plaintiff" or "Aggrieved Representative"), individually and on behalf of the State of California, all aggrieved employees, and Defendant Global Power Group, Inc. ("Defendant"). Plaintiff and Defendant are collectively referred to herein as "the Parties."

I. DEFINITIONS

The following definitions are applicable to this Settlement, in addition to other terms defined elsewhere in this Settlement:

1. "Superior Court" shall mean the Superior Court of California for the County of San Diego.

1 2. The “Action” shall mean the operative Complaint of the civil action commenced on
2 December 4, 2020, filed and maintained by Plaintiff against Defendant in the Superior Court of
3 California, County of San Diego, Case No. 37-2020-00044702-CU-OE-CTL.

4 3. “Plaintiff’s Counsel” shall mean the attorneys representing Plaintiff in the Action, Eric
5 K. Yaeckel of Sullivan & Yaeckel Law Group, APC.

6 4. “Defense Counsel” shall mean the attorneys representing Defendant in the Action,
7 Matthew C. Sgnilek of O’Hagan Meyer.

8 5. “Representative Period” shall mean the period of time from September 30, 2019,
9 through the date of the Court’s granting approval of the Settlement or seventy-four (74) calendar days
10 following mediation (i.e., October 9, 2021), whichever is earlier.

11 6. “Aggrieved Employees” shall mean all persons who, during the Representative Period,
12 have previously been or currently are employed in California by Defendants, as a non-exempt
13 employee. An “Aggrieved Employee” shall mean an individual who is a member of the Aggrieved
14 Employees (or if any such person is incompetent, deceased, or unavailable due to military service,
15 the person’s legal representative or successor in interest evidenced by reasonable verification).

16 7. “Settlement Administrator” shall mean Phoenix Settlement Administrators proposed
17 by the Parties and appointed by the Superior Court to administer the Settlement.

18 8. “Plaintiff’s Counsel Fees Payment” shall mean Thirty- Thousand Dollars and Zero
19 Cents (\$30,000.00) subject to approval by the Superior Court as Plaintiff’s Counsel’s attorneys’ fees
20 incurred in connection with the Action, including fees incurred in pre-filing investigation, filing of
21 the Action, and all related litigation activities, this Settlement, and all post-Settlement compliance
22 procedures.

23 9. “Plaintiff’s Counsel Litigation Expenses Payment” shall mean the actual litigation
24 expenses and/or costs expended by Plaintiff’s Counsel subject to approval by the Superior Court
25 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and all
26 related litigation activities, this Settlement, and all post-Settlement compliance procedures. Plaintiff’s
27 Counsel’s expenses are not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00).

28 10. “Settlement Administrator Payment” shall mean the payment to the Settlement

1 Administrator for its fees and expenses in administering this Settlement.

2 11. "Pay Period" shall mean any pay period in which an Aggrieved Employee actually
3 received payment from Defendants as a non-exempt employee.

4 12. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
5 Aggrieved Employee.

6 13. "Gross Settlement Amount" shall mean the Gross Settlement Amount of Ninety-
7 Thousand Dollars and Zero Cents (\$90,000.00) payable by Defendants as provided by this
8 Agreement.

9 14. Defendants represent that as of July 27, 2021, the number of pay periods worked by
10 the Aggrieved Employees is approximately 1,932. Should the number of qualifying Pay Periods
11 worked by the Aggrieved Employees during the Representative Period ultimately increases by more
12 than 20% (i.e., by more than 386 additional Pay Periods or more than 2318 total Pay Periods),
13 Defendants shall increase the Gross Settlement Amount equal to the percentage increase in the
14 number of Pay Periods worked by the Aggrieved Employees above 20%. For example, if the number
15 of Pay Periods increases by 21% to Pay Periods, the Gross Settlement Amount will increase by 1%.

16 15. "PAGA Payment" shall mean the Gross Settlement Amount, less (i) the Plaintiff's
17 Counsel Fees Payment approved by the Superior Court; (ii) the Plaintiff's Counsel Litigation
18 Expenses Payment approved by the Superior Court; (iii) the Settlement Administrator Payment
19 approved by the Superior Court; and (iv) any other fees or expenses (other than Plaintiff's Counsel
20 Fees Payment and Plaintiff's Counsel Litigation Expenses Payment) incurred in implementing the
21 terms and conditions of this Agreement as approved by the Superior Court.

22 16. "LWDA Payment" shall mean the payment to the California Labor and Workforce
23 Development Agency ("LWDA") constituting seventy-five percent (75%) of the PAGA Payment.

24 17. "Aggrieved Employees Payment" shall mean the remaining twenty-five percent (25%)
25 of the PAGA Payment to be distributed on a pro rata basis based upon the number of Pay Periods
26 worked by each Aggrieved Employee.

27 18. "Aggrieved Employees Payment Share" shall mean the value of each Aggrieved
28 Employee's share of the Aggrieved Employees Payment as provided by this Agreement.

1 19. “Aggrieved Employees Notice” shall mean the Notice of Settlement and Approval, a
2 sample of which is attached hereto as Exhibit A. The Aggrieved Employees Notice shall further
3 contain (i) an Aggrieved Employee’s first and last name, (ii) last known address, (iii) employee
4 identification number, if applicable, (iv) the Aggrieved Employee’s Individual Pay Periods; and (v)
5 the Aggrieved Employee’s individual share of the Aggrieved Employees Payment.

6 20. “Effective Date” shall mean the date the Court has (1) approved the settlement terms and
7 (2) issues a Judgment in the action. The parties agree that there is no right to object, opt-out, or appeal a
8 judgment that is entered in a PAGA only case. Nor shall the State of California or LWDA have any right
9 to appeal, especially considering Plaintiff will have timely notified them of the settlement and approval
10 hearing. Notwithstanding, and only in the event an appeal is nonetheless filed, then the effective date will
11 not trigger until the date all appeals from the Judgment have been full adjudicated. The parties will work
12 together to have any Appeal dismissed. However, to confirm, it is the intention of the parties that so long
13 as there is no objection, Defendants will fund the settlement within 14 days of the Effective Date.

14 21. “Judgment” shall mean the Order of Final Judgment entered by the Superior Court that
15 the Parties anticipate will be entered following an Approval Hearing on the Settlement in this Action.

16 **II. RECITALS**

17 1. On December 4, 2020, Plaintiff commenced the Action against Defendant by filing a
18 Class Action Complaint. In his Complaint, Plaintiff pled causes of action in violation of Labor Code
19 section 2698 for (1) Meal & Rest Period Violations; (2) Minimum Wage Violations; (3) Overtime
20 Violations; (4) Wage Statement Violations; (5) Failure to Reimburse Expenses; and (6) Failure to Pay
21 All Wages Upon Separation.

22 2. On September 30, 2019, Plaintiff’s Counsel, on behalf of Plaintiff and the Aggrieved
23 Employees, gave written notice to the LWDA of the Labor Code violations Defendants are alleged to
24 have violated (“PAGA Letter”).

25 3. Defendants deny and continue to deny all of Plaintiff’s material allegations.
26 Specifically, Defendants contend (1) they did not fail to pay the Aggrieved Employees the minimum
27 wage or overtime compensation; (2) they did not fail to pay the Aggrieved Employees any incentive
28 pay; (3) they provided the Aggrieved Employees with all meal and rest periods according to law; (4)

1 they provided the Aggrieved Employees with accurate timely itemized wage statements, consistent
2 with Labor Code Section 226; (5) they properly maintained all payroll records; (6) they did not fail
3 to timely pay the Aggrieved Employees wages due and owing during employment; (7) they did not
4 fail to timely pay the Aggrieved Employees wages due and owing upon separation; (8) they properly
5 reimbursed Aggrieved Employees for all reasonable and necessary business expenses (9) the
6 Aggrieved Employees are not entitled to penalties under PAGA; and (9) Defendant is not liable for
7 penalties, attorneys' fees, or costs of litigation to Plaintiff or the Aggrieved Employees.

8 4. In connection with the Action, and in order to work toward a mediated resolution
9 without the time and expense of formal discovery, the Parties produced voluminous documents and
10 data (including, by Defendants, human resources documents and policies, time records, and payroll
11 data during the Representative Period) which were reviewed, investigated, and analyzed by Plaintiff's
12 Counsel.

13 5. On July 27, 2021, the Parties in Action participated in a full day of mediation before
14 an experienced employment and class and representative action mediator, Michael Young, Esq.,
15 which resulted in a settlement of the Action (the "Mediation").

16 6. The Settlement described in this Agreement represents a compromise and settlement
17 of highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission
18 by Defendants that Plaintiff's claims in the Action have any merit or that it has any liability to
19 Plaintiff, the Aggrieved Employees, or the State on those claims, or as an admission by Plaintiff that
20 Defendants' defenses in Action have any merit. This Settlement is intended to fully, finally, and
21 forever compromise, release, resolve, discharge, and settle the released claims subject to the terms
22 and conditions set forth in this Settlement.

23 7. Based on its own thorough, independent investigation and evaluation of this case,
24 Plaintiff's Counsel is of the opinion that the Settlement of the Action with Defendants for the
25 consideration and on the terms set forth in this Settlement are fair, reasonable, adequate, and in the
26 best interest of the Aggrieved Employees in light of all known facts and circumstances, including the
27 risk of significant costs and delay, the defenses asserted by Defendant including the risks of adverse
28 determinations on the merits, and numerous potential appellate issues. Although Defendant contends

1 that it has no liability in the Action, Defense Counsel shares Plaintiff's Counsel's belief that the
2 Settlement represents a fair and adequate settlement given the respective risks associated with the
3 case.

4 8. Based on the foregoing Recitals, the Parties agree as follows:

5 **III. PROCEDURE FOR APPROVING SETTLEMENT**

6 9. **Motion for Approval of Settlement by the Superior Court.** Plaintiff will move the
7 Superior Court for an order *ex parte* or if required on regular notice granting Approval of the
8 Settlement and approving the Aggrieved Employees Notice (attached as Exhibit A to this Stipulation)
9 ("Motion for Approval"). The hearing on the Motion for Approval of Settlement shall be scheduled
10 as soon as the matter may be heard. Any unresolved disagreement among the Parties concerning the
11 Aggrieved Employees Notice or other documents necessary to implement the Settlement will be
12 referred first to Michael Young, Esq., and if no resolution is reached, then to the Superior Court.

13 10. At the hearing on the Motion for Approval, the Parties anticipate that they will jointly
14 appear, support the granting of the Motion for Approval, and obtain an order granting approval of the
15 Settlement, and granting approval of the Aggrieved Employees Notice.

16 11. Should the Superior Court require any amendments to this Agreement or the Motion
17 for Approval, the Parties agree to work jointly to resolve any issues in order to secure the Superior
18 Court's Approval.

19 12. Should the Superior Court decline to approve any material aspects of the Settlement,
20 the Settlement will be null and void and the Parties will have no further obligations under it. In such
21 event, the Parties shall be returned to their respective positions as of the date and time immediately
22 prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this
23 Agreement had not been executed.

24 13. Upon approval of the Settlement by the Superior Court, the Parties will present for the
25 Superior Court's approval and entry a Proposed Final Order and Judgment. The entry of the Order
26 and Judgment shall permanently bar all Aggrieved Employees from prosecuting against Defendant
27 any claims or causes of action of any kind through the Representative Period, which were or could
28 have been brought in this Action, whether known or unknown, as well as all claims as set forth in the

1 Release contained in Section V of this Agreement.

2 14. After entry of the Judgment, the Superior Court will have continuing jurisdiction over
3 the Action and the Settlement solely for purposes of (i) enforcing this Settlement, (ii) addressing
4 settlement administration matters, and (iii) addressing such post-Judgment matters as may be
5 appropriate under court rules or applicable law.

6 15. **Aggrieved Employees Notice.** After the Superior Court enters its order granting
7 Approval, every Aggrieved Employee will be provided with the Aggrieved Employees Notice (in
8 English and Spanish) which will include the Aggrieved Employees Notice completed to reflect the
9 order granting Approval of the Settlement and the Aggrieved Employee's information as follows:

10 (a) Within fourteen (14) calendar days after the Motion for Approval is granted,
11 Defendant will provide to the Settlement Administrator the "Aggrieved Employees' Data," which
12 shall consist of an electronic database containing each Aggrieved Employee's (i) first and last name,
13 (ii) last known mailing address, (ii) Social Security number or Tax ID, (iii) employee identification
14 number, if applicable, and based on Defendant's payroll records, and (iv) total number of Individual
15 Pay Periods. If any or all of the Aggrieved Employees' Data is unavailable, Defendant will so inform
16 Plaintiff's Counsel prior to the date on which Defendant is required to submit the Aggrieved
17 Employees' Data to the Settlement Administrator and the Parties will make their best efforts to
18 reconstruct or otherwise agree upon the Aggrieved Employees' Data prior to when it must be
19 submitted to the Settlement Administrator. If the Parties are unable to agree, the dispute will be
20 resolved by the Settlement Administrator. This information will otherwise remain confidential and
21 will not be disclosed to anyone, except as required to applicable taxing authorities, as required to
22 carry out the reasonable efforts to identify Aggrieved Employees' information as described in this
23 Paragraph 15(a), pursuant to Defendant's express written authorization, or by order of the Superior
24 Court.

25 (b) If an Aggrieved Employees Notice is returned by the U.S. Postal Service
26 because of an incorrect address, the Settlement Administrator will promptly, and not later than five
27 (5) days from receipt of the returned packet, search for a more current address for the Aggrieved
28 Employee and re-mail the Aggrieved Employees Notice to the Aggrieved Employee. The Settlement

1 Administrator will use the Aggrieved Employees' Data and otherwise work with Defense Counsel or
2 utilize its own resources such as skip traces to find a more current address. The Settlement
3 Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job
4 parameters, court orders, and fee, to trace the mailing address of any Aggrieved Employee for whom
5 an Aggrieved Employees Notice is returned by the U.S. Postal Service. These reasonable steps shall
6 include the tracking of all undelivered mail; performing address searches for all mail returned without
7 a forwarding address; and promptly re-mailing to Aggrieved Employee for whom new addresses are
8 found.

9 16. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
10 and conditions of this Settlement, Plaintiff, Aggrieved Employees, Defendant, and their respective
11 counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-
12 judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for
13 new trial, a motion under Code of Civil Procedure Section 473, and any extraordinary writ, and the
14 Judgment therefore will become non-appealable by them at the time it is entered. The waiver of
15 appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-
16 judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the
17 Settlement (including making payments under the Settlement) will be suspended until such time as
18 the appeal is finally resolved and the Judgment, consistent with the terms of this Settlement, becomes
19 Final.

20 17. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.**
21 If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion,
22 petition, writ, or application, the reviewing court vacates, reverses, or modifies the Judgment such
23 that there is a material modification to the Settlement, and that court's decision is not completely
24 reversed and the Judgment is not fully affirmed on review by a higher court, then either Party will
25 have the right to void the Settlement, which the Party must do by giving written notice to the other
26 Parties, the reviewing court, and the Superior Court, not later than fourteen (14) days after the
27 reviewing court's decision vacating, reversing, or materially modifying the Judgment becomes final.
28 For the purposes of this paragraph, a "material change" is a change to the terms outlined in the

1 accepted Memorandum of Understanding, a copy of which is attached hereto as Exhibit B. A
2 vacation, reversal, or modification of the Superior Court's award of the Plaintiff's Counsel Fees
3 Payment, and/or Plaintiff's Counsel Litigation Expenses Payment will not constitute a vacation,
4 reversal, or material modification of the Judgment within the meaning of this paragraph.

5 **18. Establishment of Settlement Account.** The Settlement Administrator shall establish
6 a Settlement Account within two (2) days of the Effective Date and notify the Parties when the
7 Settlement Account has been established. The Settlement Administrator shall also provide Defendant
8 with an itemized statement for the total amount to be deposited into the Settlement Account, which
9 shall equal the Gross Settlement Amount ("Settlement Account Deposit"). Within fourteen (14) days
10 after receiving notification of the Settlement Account and statement for the Settlement Account
11 Deposit, Defendant shall pay into the Settlement Account an amount equal to the Settlement Account
12 Deposit. Defendant shall have no obligation to pay any additional funds into the Settlement Account.

13 **19.** In the event Defendants fails to deposit the Settlement Account Deposit within
14 fourteen (14) days after the Effective Date and after receiving timely notification of the Settlement
15 Account and statement for the Settlement Account Deposit and the Parties have not agreed, in writing,
16 to an extension of time, Plaintiff may file a breach of contract claim against Defendant.

17 **20. Payment of Aggrieved Employees Payment Shares.** The Settlement Administrator
18 shall pay to each Aggrieved Employee his or her Aggrieved Employees Payment Share from the
19 Settlement Account. The Settlement Administrator shall pay each Aggrieved Employees Payment
20 Share by sending a check in the appropriate amount to the Aggrieved Employee at the address
21 indicated in the Aggrieved Employees' Data. Such payment, with the Aggrieved Employees Notice,
22 shall be sent by the Settlement Administrator via U.S. Mail within fourteen (14) days of its receipt
23 of the Settlement Account Deposit from Defendant.

24 **21. Uncashed Aggrieved Employees Payment Share Checks.** Any checks paid to
25 Aggrieved Employees shall be negotiable for one hundred eighty (180) calendar days from the date
26 of their issuance. An Aggrieved Employee must cash his or her Settlement Share check within one
27 hundred eighty days (180) calendar days after it is mailed to him or her. If a check remains uncashed
28 after one hundred eighty (180) calendar days from the initial mailing, or if a check is returned to the

1 Settlement Administrator as undeliverable during the one hundred eighty-day period, the Settlement
2 Administrator shall take all reasonable efforts to identify the Aggrieved Employee's correct address,
3 including the performance of a "skip-trace." If an updated address can be identified, the Settlement
4 Administrator shall issue another check to the Aggrieved Employee and mail it to the Aggrieved
5 Employee at his or her updated address. If an updated address for the Aggrieved Employee cannot
6 be identified, if a reissued check is once again returned to the Settlement Administrator as
7 undeliverable, or if the reissued check remains uncashed after one hundred eighty (180) calendar
8 days, the Settlement Administrator will keep an accounting of such funds and shall give notice to the
9 Parties of the total balance of uncashed Aggrieved Employees Payment Shares. An Aggrieved
10 Employee who fails to negotiate or receive their Aggrieved Employees Payment Share check despite
11 the procedures described above shall nevertheless remain bound by the Settlement and the releases
12 contained herein.

13 22. The funds represented by Aggrieved Employees Payment Share checks remaining
14 uncashed for more than one hundred eighty (180) calendar days after issuance shall be voided and
15 then shall be transmitted to the Controller of the State of California to be held pursuant to the
16 Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.* in the names of those
17 Aggrieved Employees who did not cash their checks until such time they claim their property. After
18 the expiration of the 180-calendar day check cashing period, as outlined above, the Settlement
19 Administrator shall begin the process of transferring the funds in accordance with California Code of
20 Civil Procedure §§ 1500-1582 and the timing requirements set forth by the Office of the State
21 Controller. The Parties agree that this disposition results in no "unpaid residue" under California
22 Civil Procedure Code § 384, as the entire Aggrieved Employees Payment will be paid out to
23 Aggrieved Employees, whether or not they all cash their settlement checks.

24 23. **Final Reports by Settlement Administrator to Superior Court.** Within ten (10)
25 calendar days after transmission of any remaining unclaimed funds to the Controller of the State of
26 California, the Settlement Administrator will serve on the Parties and file with the Superior Court a
27 declaration providing a final summary report on the transmission of any remaining unclaimed funds
28 to the Controller of the State of California.

1 **IV. SETTLEMENT TERMS AND CONDITIONS**

2 24. **Aggrieved Employees Payment Shares.** Subject to the terms and conditions of this
3 Settlement, the Settlement Administrator will calculate the Aggrieved Employees Payment Shares
4 for each Aggrieved Employee within ten (10) calendar days after Defendant provides the Settlement
5 Administrator with the Aggrieved Employees' Data. The Aggrieved Employees Payment Share for
6 each Aggrieved Employee will be calculated as follows, understanding that the formulas below do
7 not constitute an admission by either Party, and are intended only to provide a practical means to
8 simplify and administer the claims process:

9 (a) **Number of Aggrieved Employees and Pay Periods.** Defendant shall
10 determine the total number of Aggrieved Employees and the aggregate number of Pay Periods for
11 those Aggrieved Employees as of the close of the Representative Period. This information shall be
12 provided to the Settlement Administrator along with the Aggrieved Employees' Data as described in
13 Paragraph 18 above.

14 (b) **Calculation of the Pay Period Value.** The Settlement Administrator shall
15 determine the value of a Pay Period ("Pay Period Value") by taking the Aggrieved Employees
16 Payment amount and dividing it by the sum of all Aggrieved Employees' Pay Periods.

17 (c) **Calculation of Aggrieved Employees Payment Shares.** The Settlement
18 Administrator shall assign to each Aggrieved Employee an Aggrieved Employees Payment Share
19 which shall be equal to the Pay Period Value multiplied by each Aggrieved Employee's Individual
20 Pay Periods. Upon calculation of each Aggrieved Employee's share of the Aggrieved Employees
21 Payment, the Settlement Administrator shall furnish to Plaintiff's Counsel and Defense Counsel a
22 worksheet containing a list of employee identification numbers for the Aggrieved Employees with
23 their corresponding Individual Pay Periods and Aggrieved Employees Payment Share.

24 25. **Taxes and Withholdings.** Each Aggrieved Employees Payment Share is intended to
25 settle each Aggrieved Employee's claims for civil penalties. Accordingly, one hundred percent
26 (100%) of each Aggrieved Employees Payment Share shall represent civil penalties. The Aggrieved
27 Employees Payment Share shall be paid to the Aggrieved Employee in full without deductions or
28 withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved

1 Employee for that amount, unless the Aggrieved Employees Payment Share is \$600 or less. Each
2 Aggrieved Employee shall be individually responsible for their own share of applicable income tax
3 withholdings and deductions for his or her Aggrieved Employees Payment Share.

4 26. **Total Payment Amount.** In no event will the Defendant be required to pay more than
5 the Gross Settlement Amount for distribution to Plaintiff's Counsel, Aggrieved Employees, LWDA,
6 Settlement Administrator, or for any other costs or expenses not otherwise enumerated.

7 27. **Payments to Plaintiff's Counsel and Others.** Subject to the terms and conditions of
8 this Settlement, the Settlement Administrator will make the following payments out of the Gross
9 Settlement Amount as follows:

10 (a) **To Plaintiff's Counsel:** Plaintiff's Counsel will apply to the Superior Court
11 for the Plaintiff's Counsel Fees Payment in an amount not to exceed Thirty Thousand Dollars and
12 Zero Cents (\$30,000.00), or one-third (1/3) of the Gross Settlement Amount. Plaintiff's Counsel will
13 also submit to the Superior Court a memorandum of costs for the Plaintiff's Counsel Litigation
14 Expenses Payment in an amount not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00)
15 as request reasonable costs of suit to be paid from the Gross Settlement Amount. Defendant will not
16 oppose these requests. The Settlement Administrator will pay the amounts approved by the Superior
17 Court out of the Gross Settlement Amount. Withholding and deductions will not be taken from the
18 Plaintiff's Counsel Fees Payment or Plaintiff's Counsel Litigation Expenses Payment and one or more
19 IRS Forms 1099 will be issued to Plaintiff's Counsel with respect to those payments.

20 (b) **To the Settlement Administrator:** The Settlement Administrator will be paid
21 from the Gross Settlement Amount its reasonable fees and expenses as approved by the Superior
22 Court, which are estimated to be \$2,300.

23 (c) **To the LWDA:** As part of their Motion for Approval, the Parties will jointly
24 apply to the Superior Court for approval of the LWDA Payment in the estimated amount of
25 \$34,275 which shall constitute the LWDA's seventy-five percent (75%) share of \$45,700 in estimated
26 civil penalties paid under this Settlement. The remaining \$11,425 in civil penalties shall be distributed
27 on a *pro rata* basis based upon the number of pay periods worked by each Aggrieved Employee
28 ("Aggrieved Employees Payment").

1 28. **Appointment of Settlement Administrator.** The Parties will ask the Superior Court
2 to appoint Phoenix Settlement Administrators, a qualified and experienced administrator based in
3 California where the Action is venued, to serve as the Settlement Administrator, which, as a condition
4 of appointment, will agree to be bound by this Agreement with respect to the performance of its duties
5 and its compensation. The Settlement Administrator's duties will include (i) calculating Aggrieved
6 Employees Payment Shares; (ii) preparing, printing, and mailing the Aggrieved Employees Notice to
7 all Aggrieved Employees; (iii) using reasonable measures to contact all Aggrieved Employees,
8 including conducting a National Change of Address search on all Aggrieved Employees before
9 mailing the Aggrieved Employees Notice to each Aggrieved Employee's address; (iv) re-mailing the
10 Aggrieved Employees Notice to the Aggrieved Employee's new address for those Aggrieved
11 Employees whose address had changed; (v) setting up a toll-free telephone number to receive calls
12 from Aggrieved Employees; (vi) issuing the checks to effectuate the payments due under the
13 Settlement; (vii) using reasonable measures to deliver issued checks to Aggrieved Employees,
14 including use of a "skip-trace" for undeliverable checks; and (viii) otherwise administering the
15 Settlement pursuant to this Agreement. The Settlement Administrator will have the final authority to
16 resolve all disputes concerning the calculation of an Aggrieved Employee's Aggrieved Employees
17 Payment Share, subject to the terms set forth in this Agreement. The Settlement Administrator's
18 reasonable fees and expenses are estimated to be One Thousand, Nine Hundred and Fifty Dollars and
19 \$2,300 and will be paid out of the Gross Settlement Amount, as set forth herein, subject to Court
20 approval.

21 **V. RELEASE OF CLAIMS**

22 29. **Aggrieved Employees Released Claims.** As of the date of the Judgment, each
23 Aggrieved Employee, and without the need to manually sign a release document, in exchange for the
24 consideration recited in this Agreement, on behalf of himself or herself and on behalf of his/her
25 current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, shall and
26 does hereby fully and finally release Defendant and Defendant's parents, predecessors, successors,
27 subsidiaries, affiliates, partners, owners, assigns, franchisors, and trusts, and all of its employees,
28 officers, agents, attorneys, stockholders, fiduciaries, and other service providers including, but not

1 limited to, O'Hagan Meyer (collectively hereinafter the "Released Parties"), from any and all claims,
2 demands, rights, liabilities, and causes of action that were or could have been brought against the
3 Released Parties in the Action for civil penalties pursuant to the PAGA that were alleged or could
4 have been alleged under the Labor Code, state or local wage and hour laws and Wage Orders, whether
5 known or unknown, based on the facts and legal theories contained in the Action or the PAGA Letter,
6 including but not limited to or the PAGA notice, including claims for civil penalties based on unpaid
7 regular wages, minimum wages, overtime wages, and incentive pay; failure to pay employees all
8 minimum wages and overtime wages owed including by failing to pay all overtime and double time
9 at the correct regular rate of pay; failure to provide compliant meal and rest periods; failure to pay
10 them all premium wages owed for short, late or missed meal periods; failure to pay all wages owed
11 at discharge or resignation; failure to timely pay wages within the times permissible under Labor
12 Code section 204; failure to provide complete and accurate wage statements; failure to keep complete
13 and accurate payroll records; failure to reimburse for all necessary and reasonable business expenses;
14 and violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d),
15 1194, 1197, 1197.1, 1198, 2698, *et seq.*, that could have been premised on the claims, causes of action
16 or legal theories of relief described above or any of the claims, causes of action or legal theories of
17 relief pleaded in the operative complaint; claims that the Aggrieved Employee is an "aggrieved
18 employee" under PAGA with respect to any of the aforementioned claims released herein; and claims
19 for attorneys' fees, costs and expenses for all causes of action and claims that were alleged in the
20 Action or reasonably could have been alleged based on the facts and legal theories contained in the
21 Complaint. Following the Effective Date and Defendant funding the settlement, all Aggrieved
22 Employees will release the Released Parties from the Aggrieved Employees Released Claims that
23 accrued during the Representative Period. Aggrieved Employees cannot opt out of or object to the
24 foregoing release.

25 30. **Plaintiff's Waiver of California Civil Code § 1542.** As of the Effective Date, in
26 exchange for the consideration set forth in this Agreement, Plaintiff also agrees to expressly waive
27 the provisions of California Civil Code § 1542, which provides as follows:
28

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

8 Plaintiff's general release and waiver of California Civil Code §1542 shall cover the time period from
9 the start of his employment with Defendants up to the Effective Date.

10 31. **Plaintiff's Counsel.** As of the Effective Date, and except as otherwise provided by
11 this Settlement, Plaintiff's Counsel and any counsel associated with Plaintiff's Counsel waive any
12 further claims to costs and attorneys' fees and expenses against Defendant or the Released Parties
13 arising from or related to the Action, including but not limited to claims based on the Labor Code,
14 the Code of Civil Procedure, PAGA, the Fair Labor and Standards Act, the Business and Professions
15 Code, or any other contract, statute or law ("Plaintiff's Counsel Released Claims").

16 32. **No Effect on Other Benefits.** The payment of Aggrieved Employees Payment Shares
17 will not result in any additional employee benefit payments (such as 401(k), vacation, or bonus) and
18 shall not have any effect on the eligibility for, or calculation of, any employee benefit.

19 **VI. MISCELLANEOUS TERMS**

20 33. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful
21 activity, has failed to comply with the law in any respect, or has any liability to anyone under the
22 claims asserted in the Action. This Settlement is entered into solely for the purpose of compromising
23 highly disputed claims. Nothing in this Settlement is intended or will be construed as an admission
24 of liability or wrongdoing by Defendant, an admission by Plaintiff that any of his claims were non-
25 meritorious, or any defense asserted by Defendant was meritorious. This Settlement and the fact that
26 Plaintiff and Defendant were willing to settle the Action will have no bearing on, and will not be
27 admissible in connection with, any litigation (other than solely in connection with the Settlement).

28 34. Whether or not the Judgment becomes Final, neither the Settlement, any document,
statement, proceeding or conduct related to the Settlement, nor any reports or accounting of those
matters, will be (i) construed as, offered or admitted in evidence as, received as, or deemed to be

1 evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a
2 presumption, concession, indication or admission by any of the Released Parties of any liability, fault,
3 wrongdoing, omission, concession or damage; or (ii) disclosed, referred to or offered in evidence
4 against any of the Released Parties, or any other civil, criminal or administrative action or proceeding
5 except for purposes of effectuating this Settlement.

6 35. Notwithstanding Paragraph 34 of this Settlement, any and all provisions of this
7 Settlement may be admitted in evidence and otherwise used in any and all proceedings to enforce any
8 or all terms of this Settlement, or in defense of any claims released or barred by this Settlement.

9 36. **Integrated Agreement.** After this Settlement is signed and delivered by all Parties
10 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
11 Parties relating to this Settlement, and it will then be deemed that no oral representations, warranties,
12 covenants, or inducements have been made to any Party concerning this Settlement or its exhibits
13 other than the representations, warranties, covenants, and inducements expressly stated in this
14 Settlement and its exhibits.

15 37. **Attorney Authorization.** Plaintiff's Counsel and Defense Counsel warrant and
16 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
17 action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its
18 terms, and to execute any other documents required to effectuate the terms of this Settlement. The
19 Parties and their counsel will cooperate with each other and use their best efforts to affect the
20 implementation of the Settlement. In the event the Parties are unable to reach agreement on the form
21 or content of any document needed to implement the Settlement, or on any supplemental provisions
22 that may become necessary to effectuate the terms of this Settlement, the Parties will seek the
23 assistance of mediator Michael Young, Esq., and if no resolution is reached the Superior Court, and
24 in all cases all such documents, supplemental provisions and assistance of the court will be consistent
25 with this Settlement.

26 38. **Modification of Agreement.** This Agreement, and any and all parts of it, may be
27 amended, modified, changed, or waived only by an express written instrument signed by all Parties,
28 their successors-in-interest, and/or the Parties' respective counsel, as authorized.

40. **Applicable Law.** All terms and conditions of this Settlement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

42. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Settlement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, current and potential.

44. **Notice.** All notices, demands or other communications given under this Settlement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. Mail, addressed as follows:

To Defense Counsel: Matthew C. Sgnilek, Esq.
O'HAGAN MEYER
4695 MacArthur Court, Suite 210
Newport Beach, CA 92660

45. **Execution in Counterpart.** This Settlement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures, scanned PDF signatures, and electronic signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Settlement.

DATED: 8/24/2021

CROSHEN WALTON

DocuSigned by:

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DATED: _____

GLOBAL POWER GROUP, INC.

By: _____

Its: _____

DATED: 8/23/2021

SULLIVAN & YAECKEL LAW GROUP, APC

DocuSigned by:

EEAB82ACE00541E...

BY: _____
ERIC YAECKEL, ESQ.

**ATTORNEY FOR PLAINTIFF
CROSHEN WALTON**

DATED: _____

O'HAGAN MEYER

BY: _____
MATTHEW C. SGNILEK, ESQ.

**ATTORNEYS FOR DEFENDANTS
GLOBAL POWER GROUP, INC.**