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CALIFORNIA, INC. and KONOIKE-E STREET, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

GASPAR BARAJAS HERNANDEZ, on behalf  
of himself and all others similarly situated,

Plaintiff,

vs.

KONOIKE-PACIFIC CALIFORNIA, INC., a  
California Corporation; KONOIKE-E STREET,  
INC., a California corporation; POWER STAFF,  
a business entity unknown; and DOES 1 through  
50, inclusive,

Defendants.

Case No. 20STCV35421

*Assigned For All Purposes To:  
Hon. Kenneth R. Freeman  
Dept. 14*

**STIPULATION AND SETTLEMENT OF  
CLASS ACTION AND PAGA CLAIMS**

Complaint Filed: September 15, 2020

This Stipulation and Settlement of Class Action and PAGA Claims ("Agreement") is made  
by and between Plaintiff Gaspar Barajas Hernandez ("Plaintiff"), individually and on behalf of the  
Class Members and PAGA Group Members, on the one hand, and Defendants Konoike-Pacific  
California, Inc. ("KPAC"), and Konoike-E Street, Inc. ("KES") (collectively, "Defendants"), on the  
other hand, after Plaintiff and Defendants engaged in informal discovery, participated in two full

1 days of mediation, and negotiated this Agreement at arms-length. Plaintiff and Defendants are  
2 referred to in this Agreement collectively as the “Parties,” or individually as a “Party.” Capitalized  
3 terms used herein shall have the meanings set forth in Article I or as defined elsewhere in this  
4 Agreement.

5 For the consideration set forth herein, including, but not limited to, a release of claims by the  
6 Participating Class Members, a release by PAGA Group Members, and a general release of claims  
7 by Plaintiff, Defendants agrees to pay a settlement amount of Six Hundred Fifty Thousand Dollars  
8 and Zero Cents (\$650,000.00) (the “Settlement Amount”) as set forth herein.

9 Now, therefore, it is stipulated and agreed by and among the undersigned Parties, subject to  
10 the approval of the Court pursuant to the California Rules of Court, that the Settlement of the Action  
11 shall be effectuated subject to the following terms and conditions.

## 12 ARTICLE I

### 13 DEFINITIONS

14 Unless otherwise defined herein, the following terms used in this Agreement shall have the  
15 meanings ascribed to them as set forth below:

16 a. “Action” means the putative class lawsuit filed by Plaintiff against Defendants, as  
17 amended on January 25, 2021, in Los Angeles Superior Court, Case No. 20STCV35421, alleging  
18 violations of California’s Labor Code sections 200, 201-203, 218, 218.5, 218.6, 226, 226.7, 510,  
19 512, 1194, 1194.2, 1197 and 8 Cal. Code Regs § 11070 based on theories for: (1) failure to pay  
20 overtime wages; (2) failure to pay minimum wages, (3) failure to provide meal periods, (4) failure  
21 to provide rest periods, (5) failure to pay all wages upon termination, (6) failure to provide accurate  
22 wage statements, (6) unfair and unlawful business practices in violation of the Unfair Competition  
23 Law, Calif. Bus. & Prof. Code §§17200 *et. seq.* (“UCL”), and (7) violations of California’s Private  
24 Attorneys General Act, Calif. Labor Code §§ 2698 *et seq.*

25 b. “Agreement” means this Stipulation and Settlement of Class Action Claims, including  
26 any attached Exhibit(s).

27 c. “Attorneys’ Fees and Costs” means reasonable attorneys’ fees for Class Counsel’s  
28 litigation and resolution of this Action (not to exceed 35% of the Maximum Settlement Amount),

1 and Class Counsel's expenses and costs reasonably incurred in connection with this Action.

2 d. "Check-Cashing Period" means the period of 180 days after the date Individual  
3 Settlement Payment checks are issued.

4 e. "Claims and Allegations at Issue" means all of the claims and allegations asserted in  
5 the First Amended Complaint; (ii) the initial Complaint filed by Plaintiff against Defendants on  
6 September 15, 2020; (iii) the letter sent to the LWDA on behalf of Plaintiff dated September 14,  
7 2020; and (iv) any claims or allegations that could have been asserted under any applicable Industrial  
8 Welfare Commission ("IWC") Wage Order based on the factual allegations pled in the First  
9 Amended Complaint.

10 f. "Class" means all current and former California non-exempt hourly employees of  
11 Defendants KPAC and KES, all current and former California non-exempt hourly employees of  
12 Power Staff assigned to work at KES, and all non-exempt hourly employees of any other staffing  
13 agency who were assigned to work at KES in California during the Class Period.

14 g. "Class Counsel" means the attorneys for the Class and the Class Members, who are:

15 **THE NOURMAND LAW FIRM, APC**  
16 Michael Nourmand  
17 James A. De Sario  
18 8822 West Olympic Boulevard  
19 Beverly Hills, CA 90211  
mnourmand@nourmandlawfirm.com  
jdesario@nourmandlawfirm.com

20 h. "Class List" means a list in Excel spreadsheet format based on Defendants' business  
21 records that identifies each Class Member's name, last known home or mailing address, telephone,  
22 Social Security number or, as applicable, other taxpayer identification number, and the number of  
23 Qualifying Workweeks worked during the Class Period and/or Qualifying Pay Periods worked  
24 during the PAGA Period, which will be provided by Defendants within twenty-one (21) days of the  
25 Court granting preliminary approval of the settlement.

26 i. "Class Members" means all current and former California non-exempt hourly  
27 employees of Defendants KPAC and KES, all current and former California non-exempt hourly  
28 employees of Power Staff assigned to work at KES, and all non-exempt hourly employees of any

1 other staffing agency who were assigned to work at KES in California during the Class Period.

2 j. "Class Notice" means the Court approved Notice of Class Action Settlement and  
3 Hearing Date for Final Court Approval, to be mailed to Class Members in English and Spanish in  
4 the form, without material variation, attached as **Exhibit A**.

5 k. "Class Period" means September 15, 2016 through June 14, 2024, subject to  
6 Paragraph 3.06 (b), below.

7 l. "Class Representative" means the named Plaintiff in the operative complaint in this  
8 Action seeking Court approval to serve as a Class Representative.

9 m. "Court" means the Los Angeles County Superior Court, where the Action is currently  
10 pending.

11 n. "Defendants" mean KPAC and KES.

12 o. "Defense Counsel" means counsel for Defendants, who are:

13 **ALBRIGHT YEE & SCHMIT, APC**

14 Clifton Albright, Sr.

15 Bryan E. Luther, Jr.,

16 707 Wilshire Boulevard, Suite 3600

17 Los Angeles, CA 90017

18 clifton.albright@ayslaw.com

19 bryan.luther@ayslaw.com

20 p. "Effective Date" of this Settlement means the later of the following: (i) the date of  
21 final affirmance of the Judgment on an appeal, the expiration of the time for, or the denial of, a  
22 petition to review the Judgment, or, if review is granted, the date of final affirmance of the Judgment  
23 following review pursuant to that grant; (ii) the date of final dismissal of any appeal from the  
24 Judgment or final dismissal of any proceeding to review the Judgment, provided the Judgment is  
25 affirmed and/or not reversed in any part; (iii) the final resolution (or withdrawal) of any filed appeal  
26 in a way that affirms the Final Approval Order and Judgment in a form substantially identical to the  
27 form of the Final Approval Order entered by the Court, and the time to petition for review with  
28 respect to any appellate decision affirming the Final Approval Order has expired; or (iv) if no appeal  
is filed, the sixty-first (61<sup>st</sup>) calendar day after the Court enters final approval of the Settlement and  
the Judgment approving this Agreement.

q. "Final Fairness and Approval Hearing" means the hearing to be conducted by the

1 Court to determine whether to finally approve and implement the Settlement pursuant to the terms  
2 of this Agreement.

3 r. "Final Order" means the final order signed by the Court following the Final Fairness  
4 and Approval Hearing in accordance with the terms herein, approving this Agreement.

5 s. "Gross Settlement Amount" means the settlement amount of Six Hundred Fifty  
6 Thousand Dollars and Zero Cents (\$650,000.00) which Defendants shall pay in connection with this  
7 Settlement, by way of a common fund, which shall be inclusive of all Individual Settlement  
8 Payments, Attorneys' Fees and Costs, the Enhancement Payments, Settlement Administration Costs,  
9 and the LWDA Payment.

10 t. "Employer's Share of Payroll Taxes" means Defendants' portion of payroll taxes,  
11 including, but not limited to FICA and FUTA, on the portion of the Individual Settlement Payments  
12 that constitutes wages. The Employer's Share of Payroll Taxes shall be submitted by Defendants to  
13 the Settlement Administrator in addition to the Gross Settlement Amount.

14 u. "Enhancement Payment" means a monetary award subject to Court approval of up to  
15 Five Thousand Dollars and Zero Cents (\$5,000.00) that will be paid to Plaintiff pursuant to Section  
16 3.07 (d) of this Agreement.

17 v. "Individual Class Settlement Payment" means each Participating Class Member's pro  
18 rata share of the Net Settlement Amount calculated according to the number of Workweeks worked  
19 during the Class Period.

20 w. "Individual PAGA Settlement Payment" means each PAGA Group Member's pro  
21 rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked  
22 during the PAGA Period.

23 x. "LWDA" means the California Labor and Workforce Development Agency.

24 y. "LWDA Payment" means the portion of the PAGA Payment payable to the LWDA.

25 z. "Motion for Final Approval" means Plaintiff's submission of a written motion,  
26 including any evidence as may be required for the Court to conduct an inquiry into the fairness of  
27 the Settlement Agreement as set forth in this Agreement, to conduct a Final Fairness and Approval  
28 Hearing, and to enter a Final Order in this Action.

1           aa.     “Motion for Preliminary Approval” means Plaintiff’s written motion, including any  
2 evidence as may be required for the Court to grant preliminary approval of the Settlement Agreement  
3 as required by Rule 3.769 of the California Rules of Court.

4           bb.     “Net Settlement Amount” means the Gross Settlement Amount less the amount  
5 allocated to Settlement Administration Costs, Attorneys’ Fees and Costs, Enhancement Payment and  
6 the PAGA Payment.

7           cc.     “Objection” means the Class Member’s timely submission of a written objection from  
8 the Class Settlement, which must explain the reason for the objection and be signed by the Class  
9 Member.

10          dd.     “Operative Complaint” means the First Amended Complaint pursuant to Section 3.01,  
11 below.

12          ee.     “PAGA” means the California Private Attorneys General Act of 2004, which is  
13 codified in California Labor Code §§ 2698, *et seq.*

14          ff.     “PAGA Group Members” means all current and former California non-exempt hourly  
15 employees of Defendants KPAC and KES, all current and former California non-exempt hourly  
16 employees of Power Staff assigned to work at KES, and all non-exempt hourly employees of any  
17 other staffing agency who were assigned to work at KES in California during the PAGA Period.

18          gg.     “PAGA Payment” means the amount payable from the Maximum Settlement Amount  
19 to resolve the PAGA claim alleged in the Action, of which seventy-five percent (75%) shall be paid  
20 to the LWDA and twenty-five percent (25%) shall be paid to Aggrieved Employees.

21          hh.     “PAGA Period” means the period from September 15, 2019 through June 14, 2024,  
22 subject to Section 3.06(b) below.

23          ii.     “Pay Period” means any pay period during which a PAGA Group Member worked at  
24 least one day for Defendants KPAC and KES as non-exempt hourly employees in California during  
25 the PAGA Period or worked for Power Staff or another staffing agency and were assigned to work  
26 at KES in California during the PAGA Period.

27          jj.     “Participating Class Member” means a Class Member who does not timely request to  
28 be excluded from the Settlement and will therefore receive a share of the Net Settlement Amount.

1 kk. "Preliminary Approval Date" means the date the Court preliminarily approves the  
2 Settlement in accordance with the terms of this Agreement.

3 ll. "Preliminary Approval Order" means the order the Court enters approving and  
4 authorizing the mailing of the Notice by the Settlement Administrator, setting the date of the Final  
5 Fairness and Approval Hearing and granting preliminary approval of the Settlement set forth in this  
6 Agreement, among other things.

7 mm. "Released Class Claims" means the claims being released as described in Section  
8 4.01, below.

9 nn. "Released PAGA Claims" means the claims being released as described in Section  
10 4.02, below.

11 oo. "Released Parties" are defined in Section 4.01, below.

12 pp. "Request for Exclusion " means the Class Member's timely submission of a written  
13 request to be excluded from the Class Settlement signed by the Class Member.

14 qq. "Settlement" means the final resolution and disposition of the Action pursuant to this  
15 Agreement.

16 rr. "Settlement Administration Costs" means all costs (not to exceed \$10,000.00)  
17 incurred by the Settlement Administrator in administering the Settlement, including, but not limited  
18 to, the following: (i) printing, mailing and re-mailing (if necessary) of Class Notice to Class Members  
19 in English and Spanish; (ii) preparing and submitting to Participating Class Members and  
20 government entities all appropriate tax filings and forms; (iii) computing the amount of and  
21 distributing Individual Settlement Payments, the Enhancement Award, Attorneys' Fees and Costs,  
22 and the LWDA Payment; (iv) processing and validating Request for Exclusion Forms and Notices  
23 of Objection; (v) establishing a Qualified Settlement Fund ("QSF"), as defined by the Internal  
24 Revenue Code; and (vi) calculating and remitting to the appropriate government agencies all  
25 employer and employee payroll tax obligations arising from the Settlement and preparing and  
26 submitting filings required by law in connection with the payments required by the Settlement.

27 ss. "Settlement Administrator" means CPT Group, which will be responsible for the  
28 administration of the Settlement pursuant to the terms of this Agreement.

tt. “Workweeks” means any week during which a Class Member worked at least one day for Defendants as non-exempt hourly employees in California during the Class Period, or worked for Power Staff or another staffing agency and were assigned to work at KES in California during the Class Period.

## ARTICLE II

## CONTINGENT NATURE OF THE AGREEMENT

### **Section 2.01: Stipulation to Class Certification for Settlement Purposes**

The Parties agree that the Action will be stayed until the request for preliminary and final approval of the Settlement is either granted or denied. Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Operative Complaint for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Defendants do not consent to certification of the Class for any purpose other than to effectuate the Settlement of the Action. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court.

**Section 2.02: Continued Best Efforts to Obtain Court Approval of Settlement**

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement in accordance with the terms of this Agreement and shall use their respective best efforts to obtain Court approval and to implement this Agreement. If the Court does not grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to reach a resolution, the Parties agree to seek the assistance of mediator Judge Richard Stone (Ret.) to resolve the dispute.

### **Section 2.03: Effect of Non-Occurrence of Effective Date**

**If the Effective Date does not occur, the Parties agree as follows:**

- (a) Any conditional certification of the Class will be vacated and Plaintiff, Defendants, and the Class will be returned to their positions with respect to the Action as if this Agreement had not been entered into. Any Settlement Administration costs incurred to that point will be split by the Parties.

- 1 (b) Any orders of the Court preliminarily or finally approving certification of any  
2 class contemplated by this Agreement shall be null, void, and vacated, and  
3 shall not be used or cited thereafter by any person or entity.
- 4 (c) The fact that the Parties were willing to stipulate to certification for the  
5 purposes of this Agreement shall have no bearing on, nor be admissible in  
6 connection with, the issue of certification of the Class with respect to any  
7 cause of action alleged in the Action.
- 8 (d) The fact of the settlement terms reflected in this Agreement and the fact that  
9 Defendants did not oppose the certification of a Class under this Agreement  
10 or that the Court preliminarily approved the certification of the Class shall not  
11 be used or cited thereafter by any person or entity in any manner whatsoever,  
12 including without limitation any contested proceeding relating to the  
13 certification of any class.
- 14 (e) This Agreement shall be deemed null and void, shall be of no force or effect  
15 whatsoever, and shall not be referred to or used for any purpose whatsoever.

### 16 ARTICLE III

#### 17 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

18 The procedure for obtaining Court approval of and implementing this Agreement shall be as  
19 follows:

##### 20 **Section 3.01: Preliminary Approval and Conditional Class Certification**

21 Within 60 days of this Stipulation and Settlement of Class Action Claims being executed by  
22 all Parties, Plaintiff will submit the Motion for Preliminary Approval along with this Agreement to  
23 the Court for preliminary approval pursuant to Rule 3.769 of the California Rules of Court. Plaintiff's  
24 Motion for Preliminary Approval will request an order conditionally certifying the Class. The Motion  
25 for Preliminary Approval will request a hearing date for the Final Fairness and Approval Hearing to  
26 be included in the Preliminary Approval Order. Defendants will not oppose the Motion for  
27 Preliminary Approval.

28 ///

1           **Section 3.02: The Settlement Administrator**

2                   **a.       Settlement Administrator Duties, Generally**

3           The Parties shall solicit bids from two settlement administrators. The Parties have chosen  
4 CPT Group to administer the Settlement pursuant to this Agreement and to act as the Settlement  
5 Administrator. The Settlement Administrator shall perform all functions required under this  
6 Agreement and take necessary steps to effectuate the Settlement, including, but not limited to, the  
7 following: distributing and responding to inquiries about the Class Notice; determining the validity  
8 of any Requests for Exclusion, dispute as to workweeks, and/or notice of Objection; calculating the  
9 Net Settlement Amount and the Individual Settlement Payments; issuing the Individual Settlement  
10 Payment checks and distributing them to Participating Class Members and PAGA Group Members;  
11 issuing the PAGA Payment to the LWDA; and issuing payment to Class Counsel for Attorneys' Fees  
12 and Costs, to Plaintiff for his Enhancement Award, and to the appropriate taxing authorities for the  
13 Employer's Share of Payroll Taxes, which will be paid by Defendants separately and in addition to  
14 the Gross Settlement Amount. The Settlement Administrator shall provide Class Counsel an  
15 estimated average of the recovery for the Class Members, and the estimated high and low ranges of  
16 possible recoveries. To protect Class Members' privacy rights, the Settlement Administrator shall  
17 maintain any and all Class Member identifying information provided to it by Defendants ("Class  
18 Data") in confidence, use the Class Data only for purposes of this Settlement and for no other  
19 purpose, and restrict access to the Class Data to Administrator employees who need access to the  
20 Class Data to effect and for this Agreement. The Settlement Administrator has a continuing duty to  
21 immediately notify Defense Counsel if it discovers the confidentiality of the Class Data has been  
22 breached. In addition, the Settlement Administrator shall notify Defense counsel only of any opt-out  
23 notices received.

24           **Section 3.03: Notice to Class Members**

25           No later than twenty-one (21) calendar days after the Preliminary Approval Date, Defendants  
26 will provide the Settlement Administrator the Class List.

27           Within seven (7) calendar days of receiving the Class List from Defendants, the Settlement  
28 Administrator will send Class Members, by first-class mail, at their last known addresses, the Court

1 approved Class Notice. The Class Notice will include a calculation of each Class Member's estimated  
2 share of the Net Settlement Amount. Class Members will have forty-five (45) days from the date of  
3 mailing of the Notice to postmark objections, dispute workweeks or requests for exclusion. Prior to  
4 the initial mailing, the Settlement Administrator will check all Class Member addresses against the  
5 National Change of Address database and shall update any addresses before mailing. Class Members  
6 shall not be required to submit claim forms in order to receive a share of the Net Settlement Amount.

7       If a Class Notice is returned with a forwarding address, the Settlement Administrator shall  
8 re-mail the Class Notice to the forwarding address. With respect to each Class Member whose Notice  
9 is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall  
10 promptly attempt to obtain a valid mailing address by performing a skip trace or mass search on  
11 LexisNexis and/or Accurant or similar databases based on set criteria and, if another address is  
12 identified, shall mail the Notice to the newly identified address. It is the intent of the Parties that  
13 reasonable means be used to locate Class Members and that the Settlement Administrator be given  
14 discretion to take steps in order to facilitate notice of the Settlement and delivery of the Individual  
15 Settlement Payments to the Participating Class Members.

16       If a Class Member's Notice is re-mailed, the Class Member shall have ten (10) days from the  
17 re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, to postmark  
18 objections, dispute workweeks or requests for exclusion. If the Class Notice is re-mailed, the  
19 Settlement Administrator will note for its own records and notify Class Counsel and Defense Counsel  
20 of the date of each such re-mailing as part of a weekly status report provided via email to counsel for  
21 the Parties.

22       In the event a Class Notice remains undeliverable sixty (60) days after its initial mailing, the  
23 Settlement Administrator will not mail the Class Member's Individual Settlement Payment. The  
24 Settlement Administrator will hold the Class Member's Individual Settlement Payment during the  
25 Check-Cashing Period on behalf of the Class Member. If, at the conclusion of the Check-Cashing  
26 Period, the Class Member's Notice and Individual Settlement Payment remain undeliverable, the  
27 Settlement Administrator will send the funds from those checks to the State of California's State  
28 Controller Unclaimed Property Fund with an identification of the amount of unclaimed funds

1 attributable to each such Class Member.

2 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the  
3 Settlement Administrator shall provide Class Counsel and Defense Counsel with a declaration  
4 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses  
5 for and re-sending of any returned Notices, as well as the number requests for exclusion, dispute of  
6 workweeks and objections that the Settlement Administrator received.

7 **Section 3.04: Responses to Notice**

8 **a. Settlement Terms Bind All Class Members Who Do Not Submit a Timely**  
9 **Request for Exclusion**

10 Any Class Member who does not affirmatively opt out of the Settlement by submitting a  
11 timely Request for Exclusion will be bound by all of its terms including those pertaining to the  
12 Released Claims, as well as any Final Order that may be entered by the Court if it grants final  
13 approval of the Settlement.

14 **b. Class Member Disputes**

15 If a Class Member disputes the Individual Settlement Payment or any other information on  
16 the Notice of Class Action Settlement that s/he receives, the Class Member may produce evidence  
17 to the Settlement Administrator for the Class Period. In order for the dispute to be considered, s/he  
18 must follow the directions on the Notice of Class Action Settlement.

19 Written notice of the dispute must be received by the Settlement Administrator within 45  
20 calendar days of the mailing of the Notice. The date of mailing the Notice by the Settlement  
21 Administrator to the Class Member, and the date the notice of dispute was postmarked, shall be  
22 conclusively determined according to the records of the Settlement Administrator. Upon the timely  
23 receipt of any dispute, the Settlement Administrator will notify Defense Counsel in writing (email  
24 constitutes a writing for this purpose) of the dispute. Defendants' records will be presumed  
25 determinative, absent evidence to rebut Defendants' records, but the Settlement Administrator will  
26 evaluate the evidence submitted by the Class Member and make the final decision as to the validity  
27 of such evidence.

28 ///

1                   **c.       Requests for Exclusion from Class Members**

2           By entering into this Agreement, Plaintiff agrees that he will not request exclusion from the  
3 Class.

4           Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send  
5 the Administrator by mail, a Request for Exclusion that must be signed by the Class Member or his  
6 or her authorized representative, and must be sent to the Settlement Administrator, postmarked by  
7 no later than forty-five (45) days after the date the Settlement Administrator initially mails the Notice  
8 to the Class Members. The Class Notice shall contain instructions on how to validly exclude oneself  
9 from the Class portion of this Settlement. The date of the initial mailing of the Class Notice, and the  
10 date the signed Request for Exclusion was postmarked, shall be conclusively determined according  
11 to the records of the Settlement Administrator. Any Class Member who timely and validly submits  
12 a Request for Exclusion will not be entitled to any Individual Settlement Payment from the Net  
13 Settlement Amount, will not be bound by the terms and conditions of this Agreement, and will not  
14 have any right to object, appeal, or comment thereon. However, even if Class Members validly opt  
15 out of the Settlement, they may still be entitled to a portion of the employees' share of the PAGA  
16 Payment if the Class Member also is a PAGA Group Member.

17           Any Class Member who fails to timely submit a Request for Exclusion shall automatically  
18 be deemed a Class Member whose rights and claims with respect to the issues raised in the Action  
19 are determined by the Court's Final Order, and by the other rulings in the Action. Thus, said Class  
20 Member's rights to pursue any claims covered by the Action and/or released in this Agreement will  
21 be extinguished.

22           Defendants have the unilateral right to void this Agreement in the event more than ten percent  
23 (10%) of Class Members opt out of the Settlement. Defendants must notify Class Counsel and the  
24 Court whether it is exercising this right to void no later than fourteen (14) days after the end of the  
25 class notice period and the Settlement Administrator notifies the Parties of the total number of valid  
26 Request for Exclusion Forms it has received. If Defendants exercise this option, they must pay for  
27 any costs incurred by the Settlement Administrator.

28 ///

1                   **d.       Objections to Settlement**

2           Class Members may object to the Settlement by submitting to the Settlement Administrator  
3 his or her notice of Objection or by appearing at the Final Fairness and Approval Hearing to explain  
4 their objection(s). In order for a Class Member to object to this Agreement, or any term of it, the  
5 Class Member must not submit a Request for Exclusion notice (*i.e.*, must not opt out). A notice of  
6 Objection must include the Class Member's full name, a written statement of the grounds of  
7 objection, and be signed by the objecting Class Member or his or her attorney, along with all  
8 supporting papers. Class Members may also appear at the Final Approval hearing, with or without  
9 counsel, at their own expense, to present objections to the settlement. The notice of Objection and  
10 supporting papers should be sent to the Settlement Administrator by mail no later than forty-five (45)  
11 days after the Class Notice was initially mailed to the Class Members. The date of the initial mailing  
12 of the Class Notice, and the date the signed notice of Objection was postmarked, shall be conclusively  
13 determined according to the records of the Settlement Administrator. The Settlement Administrator  
14 shall send, via email, any notice of Objection it receives to Defense Counsel and Class Counsel  
15 within three (3) business days of receipt. Class Counsel and Defense Counsel shall file a response  
16 to any objection within seven (7) days prior to the Final Approval Hearing.

17           The Court retains final authority with respect to the consideration and admissibility of any  
18 Class Member objections.

19                   **e.       Encouragement of Class Members**

20           The Parties, Class Counsel, and Defense Counsel shall not, directly or indirectly, through any  
21 person, encourage or solicit any Class Member to exclude himself or herself from the class portion  
22 of this Settlement (opt out) or to object to the Settlement. However, nothing in this Agreement shall  
23 bar or prohibit any Party, Class Counsel, or Defense Counsel from responding to questions from  
24 Class Members concerning this Settlement.

25                   **Section 3.05: Final Fairness and Approval Hearing**

26           The Final Fairness and Approval Hearing shall be held before the Court in order to (1) review  
27 this Agreement and determine whether the Court should grant final approval pursuant to the Motion  
28 for Final Approval, and (2) consider any timely objections made pursuant to Section 3.05(d), above,

1 and any responses from the Parties to such objections. At the Final Fairness and Approval Hearing,  
2 the Parties shall ask the Court to grant final approval of this Agreement and shall submit to the Court  
3 a proposed Final Order.

4       **Section 3.06: Settlement Payment Procedures**

5               **a.       Funding the Settlement Amount**

6       In exchange for the releases set forth in this Agreement and subject to the terms and  
7 conditions set forth herein, Defendants agree to pay the Gross Settlement Amount on a non-  
8 reversionary basis. The Gross Settlement Amount includes Individual Settlement Payments to  
9 Participating Class Members and PAGA Group Members, Settlement Administration Costs,  
10 Attorneys' Fees and Costs, Enhancement Payments, and the LWDA Payment. The Employer's Share  
11 of Payroll Taxes will be paid by Defendants separate from and in addition to the Gross Settlement  
12 Amount. Defendants are not jointly and severally liable for the Gross Settlement Amount. In no  
13 event will Defendants be required to pay more than the Gross Settlement Amount, other than as  
14 provided in Section 3.06 (b) below (if the escalator clause is triggered and Defendants elect to  
15 increase the Gross Settlement Amount).

16       Within seven (7) calendar days after the Effective Date, Defendants will deposit the Gross  
17 Settlement Amount plus the applicable employer side payroll taxes with the Settlement  
18 Administrator, as set forth herein.

19               **b.       Escalator Clause.**

20       Defendants represented that there are 46,625 Workweeks from September 15, 2016 to  
21 December 8, 2023 ("Data Period"). To the extent the final amount of Workweeks for the Data Period  
22 exceeds 110% of that number, i.e., 51,288 total Workweeks, Defendants will have the option of:  
23 (1) increasing the Gross Settlement Amount on a pro rata basis for each additional Workweek above  
24 51,288, or (2) ending the Class Period and PAGA Period on the date before the 51,288 Workweek  
25 threshold is exceeded.

26               **c.       Payment of Attorneys' Fees and Costs**

27       Class Counsel shall apply for an award of attorneys' fees of up to 35% of the Gross Settlement  
28 Amount, which is Two Hundred Twenty-Seven Thousand Five Hundred Dollars and Zero Cents

1 (\$227,500.00). In addition, subject to Court approval, Class Counsel shall be entitled to an award of  
2 reasonable costs associated with Class Counsel's prosecution of the Action not to exceed Thirty  
3 Thousand Dollars (\$30,000.00). Such application for attorneys' fees and costs shall be heard by the  
4 Court at the Final Fairness and Approval Hearing. Defendants will not object to or oppose Plaintiff's  
5 application for these amounts. Class Counsel shall be paid any Court-awarded attorneys' fees and  
6 costs no later than fourteen (14) calendar days after the Effective Date of the Settlement. The Court's  
7 approval of attorneys' fees and/or costs in an amount less than that requested by Class Counsel shall  
8 not invalidate this Agreement.

9 Any fees and costs awarded by the Court shall be paid from the Gross Settlement Amount  
10 and shall not constitute payment to any Class Member(s). The Attorneys' Fees and Costs approved  
11 by the Court shall encompass all work performed and all costs and expenses related to the  
12 investigation, prosecution, and settlement of the Action incurred through the Effective Date. To the  
13 extent that the Court approves less than the amounts of attorneys' fees and/or costs that Class Counsel  
14 requests, the difference between the requested and awarded amounts will be reallocated to the Net  
15 Settlement Amount.

16 **d. Payment of Settlement Administration Costs**

17 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and  
18 shall not constitute payment to any Participating Class Member. Class Counsel will submit an  
19 application for Court approval for an allocation of Settlement Administration Costs no greater than  
20 Ten Thousand Dollars and Zero Cents (\$10,000.00). Defendants will not object to or oppose  
21 Plaintiff's application for this amount. To the extent there are unused funds of this cost allocation,  
22 such funds will be reallocated to the Net Settlement Amount.

23 **e. Payment of Enhancement Payments to Plaintiff**

24 Subject to Court approval, Plaintiff shall receive an Enhancement Payment of up to Five  
25 Thousand Dollars and Zero Cents (\$5,000.00) for services as class representatives and in exchange  
26 for a general release of Plaintiff's claims. Defendants will not oppose this request. The Enhancement  
27 Payment will be paid from the Gross Settlement Amount and is not allocated as payment to any  
28 Participating Class Member. Plaintiff shall be paid the Court-awarded Enhancement Payment no

1 later than fourteen (14) days after the Effective Date of the Settlement. To the extent that the Court  
2 approves less than the amount of the Enhancement Payment that Plaintiff has requested, the  
3 difference between the requested and awarded amount will be reallocated to the Net Settlement  
4 Amount.

5 Because it is the intent of the Parties that the Enhancement Payment represents payment to  
6 Plaintiff for services performed on behalf of the Class Members and not to be considered wages, the  
7 Settlement Administrator will not withhold any taxes from the Enhancement Payment. The  
8 Enhancement Payment will be reported on an IRS Form 1099, which the Settlement Administrator  
9 will provide to each Plaintiff and to the pertinent taxing authorities as required by law.

10 **f. LWDA Payment**

11 In consideration of claims alleged under PAGA, Class Counsel will request that the Court  
12 approve allocation of Twenty Thousand Dollars and Zero Cents (\$20,000.00) of the Gross Settlement  
13 Amount as PAGA penalties. Seventy-five percent (75%), or Fifteen Thousand Dollars (\$15,000.00),  
14 of this amount will be paid to the LWDA, and twenty-five percent (25%), or Five Thousand Dollars  
15 (\$5,000.00) will be allocated to the Net Settlement Amount for distribution to PAGA Group  
16 Members. Defendants will not oppose this request for allocation and distribution of payments under  
17 this Section 3.08(e). The Court's adjustment, if any, of the amount allocated as PAGA penalties will  
18 not invalidate this Agreement, as long as the Gross Settlement Amount does not exceed \$650,000.00  
19 (subject to Section 3.06 (a) above) and final approval of the Settlement is granted.

20 **g. PAGA Payments to Aggrieved Employees**

21 If a Class Member requests exclusion from the Settlement, the Class Member is still entitled  
22 to his or her share of the employees' portion of the PAGA Payment, which will be determined on a  
23 pro rata basis based upon the number of workweeks that the Aggrieved Employee worked during the  
24 PAGA Period.

25 **h. Individual Settlement Payments to Participating Class Members**

26 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement  
27 Payments. The Parties agree that the Net Settlement Amount shall be divided between all  
28 Participating Class Members in proportion to the number of Workweeks for each Class Member. To

1 calculate the amount each Participating Class Member will receive, the Net Settlement Amount will  
2 be divided by the total number of Workweeks worked by all Participating Class Members during the  
3 Class Period to determine the base dollar amount per Workweek. The Settlement Administrator shall  
4 then multiply the number of Workweeks for each Participating Class Member by the base dollar  
5 amount. In addition, all PAGA Group Members shall receive a pro rata share of the portion of the  
6 PAGA Payment allocated to PAGA Group Members based on their Pay Periods during the PAGA  
7 Period. The Settlement Administrator shall disperse Individual Settlement Payments to Participating  
8 Class Members within fourteen (14) days after the Effective Date of the Settlement.

9 Each Individual Settlement Payment will represent wages, penalties, and interest allocated  
10 using the following formula: twenty percent (20%) allocated to wages, thirty percent (30%) allocated  
11 to interest, and fifty percent (50%) allocated to penalties. PAGA Group Members payment shall be  
12 allocated as one hundred percent (100%) penalties.

13 Based on the information contained in the Class List, the Settlement Administrator shall  
14 calculate: (a) the Net Settlement Amount, (b) the Individual Settlement Payment for each  
15 Participating Class Member based on the formula specified above, (c) the amount of the Individual  
16 Settlement Payments to be allocated to wages and interest and penalties based on the formula  
17 specified above, (d) Defendants' share of the payroll taxes applicable to the Net Settlement Amount  
18 allocated to wages; and (e) the employee tax withholding amount based on the allocation of each  
19 Individual Settlement Payment to wages.

20 Individual Settlement Payments allocated to wages will be reduced by applicable employee  
21 withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the  
22 Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 for the interest  
23 and penalty portions of the Individual Settlement Payments.

24 Participating Class Members shall have 180 days from the date their Individual Settlement  
25 Payment checks are dated to cash their settlement checks.

26 **i. Distribution of the Gross Settlement Amount**

27 The Settlement Administrator will distribute the Individual Settlement Payments to  
28 Participating Class Members no later than fourteen (14) days after the Effective Date of the

1 Settlement. If Individual Settlement Payments are returned to the Settlement Administrator as  
2 undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address  
3 by performing a skip trace or a mass search on LexisNexis, Accurint or similar databases based on  
4 set criteria and, if another address is identified, shall mail the check to the newly identified address.  
5 If the Settlement Administrator is unable to obtain a valid mailing address or if any funds representing  
6 Individual Settlement Payments remain uncashed upon the expiration of the Check-Cashing Period,  
7 the Settlement Administrator will deliver the monies represented by the check to the State of  
8 California's State Controller Unclaimed Property Fund with an identification of the amount of  
9 unclaimed funds attributable to each Class Member.

10 **j. No Credit Toward Benefit Plans**

11 The Individual Settlement Payments made to Participating Class Members under this  
12 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to  
13 calculate any additional benefits under any benefit plans to which any Class Members may be  
14 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase  
15 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'  
16 intent that this Agreement will not affect any rights, contributions, or amounts to which any Class  
17 Members may be entitled under any benefit plans.

18 **ARTICLE IV**

19 **RELEASES**

20 **Section 4.01: Releases by Participating Class Members and Plaintiff**

21 a. For the Class Period, Plaintiff and Participating Class Members will release the  
22 Released Parties (defined in this paragraph below) from all claims under federal, state or local law,  
23 arising out of the facts, claims, and theories expressly pleaded in the First Amended Complaint, or  
24 any prior Complaints; the facts, claims or theories expressly raised in Plaintiff's notice to the LWDA  
25 dated September 14, 2020, regarding Defendants KPAC, KES, and/or Power Staff; and/or any facts,  
26 claims or theories arising under any applicable IWC Wage Orders, including claims alleging  
27 violations of California's Labor Code sections 200, 201-203, 218, 218.5, 218.6, 226, 226.7, 510,  
28 512, 1194, 1194.2, 1197 and 8 Cal. Code Regs § 11070 and/or based on theories for: (1) failure to

1 pay overtime wages; (2) failure to pay minimum wages, (3) failure to provide meal periods,  
2 (4) failure to provide rest periods, (5) failure to pay all wages upon termination, (6) failure to provide  
3 accurate wage statements, and (6) unfair and unlawful business practices in violation of the UCL.  
4 (“Released Class Claims”)

5 Plaintiff and Participating Class Members will waive and release the Released Claims against  
6 Defendants KPAC and KES, together with their current and former owners, officers, directors,  
7 managers, members, employees and/or agents, including without limitation Power Staff, Southwest  
8 Staffing, Real Time Staffing Services d.b.a. Select Staffing (“Real Time”), and any other third party  
9 staffing agency who placed employees to work at KPAC and/or KES during the Class Period (except  
10 Real Time’s release is limited to those associates placed to work at KES) (the “Released Parties”).

11 **Section 4.02: Release by Aggrieved Employees and Plaintiff**

12 In addition to the release set forth in Section 4.01 above, for the PAGA Period, Plaintiff and  
13 all PAGA Group Members shall be deemed to have released the Released Parties of any and all  
14 claims and/or causes of action under PAGA which are based upon the facts, claims and theories  
15 expressly pleaded in the First Amended Complaint and/or any prior Complaints, and/or any facts,  
16 claims, or theories set forth in the LWDA Notice against Defendants KPAC, KES, and/or or Power  
17 Staff dated September 14, 2020; and any facts, claims or theories arising under any applicable IWC  
18 Wage Orders, which include alleged violations of California’s Labor Code sections 200, 201-203,  
19 218, 218.5, 218.6, 226, 226.7, 510, 512, 1194, 1194.2, 1197 and 8 Cal. Code Regs § 11070 and/or  
20 which are based on theories for: (1) failure to pay overtime wages; (2) failure to pay minimum wages,  
21 (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to pay all wages  
22 upon termination, (6) failure to provide accurate wage statements, and (6) violations of the PAGA  
23 (“Released PAGA Claims”).

24 **Section 4.03: General Release by Plaintiff**

25 Upon Defendants providing the Gross Settlement Amount and employer’s share of payroll  
26 taxes to the Settlement Administrator, Plaintiff for himself and his heirs, successors, and assigns,  
27 waives, releases, acquits, and forever discharges the Released Parties from any and all claims,  
28 actions, charges, complaints, grievances, and causes of action, of any nature arising from Plaintiff’s

1 employment with Defendants KPAC, KES, and/or Power Staff, whether known or unknown, which  
2 exist or may exist as of the Parties' execution of this Agreement.

3 Section 1542 of the California Civil Code provides as follows:

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

9 Plaintiff's general release provided herein is made with an express waiver and relinquishment  
10 of any claim, right, or benefit under California Civil Code § 1542. Plaintiff warrants that he has read  
11 this Agreement, including this waiver of California Civil Code § 1542, and that Plaintiff has  
12 consulted with or had the opportunity to consult with counsel about this Agreement and specifically  
13 about the waiver of § 1542, and that Plaintiff understands this Agreement and the § 1542 waiver, and  
14 so he freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff  
15 later may discover facts different from or in addition to those Plaintiff now knows or believes to be  
16 true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that  
17 the releases and agreements contained in this Agreement shall remain effective in all respects  
18 notwithstanding any later discovery of any different or additional facts.

19 **Section 4.04: Plaintiff's Employment**

20 It is understood that by entering into this Agreement, the Parties agree that Plaintiff's  
21 employment with Defendants KPAC, KES and/or Power Staff has ended. The Parties agree that  
22 Defendants KPAC, KES and/or Power Staff had legitimate, non-discriminatory and non-retaliatory  
23 reasons for ending the employment relationship.

24 **Section 4.05: No Publicity**

25 The Parties, each of them, and their respective counsel agree to limit public comment on this  
26 settlement, the case, and the claims to stating that the matter has been resolved to the satisfaction of  
27 all Parties. None of the above will initiate public comment.

28 ///

**Section 4.06: No Additional Attorneys' Fees or Costs**

Except for the allocation of attorneys' fees and costs from the Gross Settlement Amount set forth herein, the Parties agree to bear their own attorneys' fees and costs related to this Action.

### **Section 4.07: Inapplicability of California Labor Code 206.5**

The Participating Class Members, including Plaintiff, shall be deemed to have acknowledged and agreed that there is a bona fide dispute as to their claim for wages and/or penalties and/or any other recovery solely in connection with this Action, and that the payments to them set forth in this Agreement constitute payment of all sums allegedly due to them solely from the claims alleged in the Action. Participating Class Members, including Plaintiff, shall be deemed to have acknowledged and agreed that Labor Code section 206.5 does not apply to any such payments. That section provides in pertinent part as follows: **“No employer shall require the execution of any release of any claim or right on account of wage due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”** Each Participating Class Member shall be deemed to have made the foregoing Release as if by manually signing it. This section in no way limits the releases set forth in Sections 4.01, 4.02 and 4.03, above.

## ARTICLE V

## **LIMITATIONS ON USE OF THIS SETTLEMENT**

### Section 5.01: No Admission

Defendants dispute the allegations in the Action and contend that, but for this Settlement, a Class should not have been certified in the Action. This Agreement is entered into solely for the purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendants and/or the Released Parties. The Parties enter into this Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Agreement, Defendants do not admit—and in fact specifically deny—that they violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to any

1 and all employees of Defendants and/or the Released Parties. Neither this Agreement, nor any of its  
2 terms or provisions, nor any of the negotiations connected with it, will be construed as an admission  
3 or concession by Defendants and/or the Released Parties of any such violations or failures to comply  
4 with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement,  
5 this Agreement and its terms and provisions will not be offered or received as evidence in any action  
6 or proceeding to establish any liability or admission on the part of Defendants or the Released Parties  
7 or to establish the existence of any condition constituting a violation of, or non-compliance with,  
8 federal, state, local, or other applicable law.

9 **Section 5.02: Non-Evidentiary Use**

10 Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the  
11 Settlement itself will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed  
12 to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including  
13 but not limited to, evidence of a presumption, concession, indication, or admission by any of the  
14 Released Parties of any liability, fault, wrongdoing, omission, concession, or damage; or  
15 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further  
16 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this  
17 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims  
18 released through this Agreement.

19 **Section 5.03: Nullification**

20 The Parties have agreed to the certification of the Class encompassing all claims alleged in  
21 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason  
22 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this  
23 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order  
24 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the  
25 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this  
26 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all  
27 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had  
28 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to

1 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will  
2 have no bearing on, and will not be admissible in connection with, the issue of whether the Class  
3 should be certified by the Court in a non-settlement context in this Action or any other action, and in  
4 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

5 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the  
6 Gross Settlement Amount shall not be distributed until 14 days after the Effective Date with respect  
7 to any appeal as set forth herein.

## 8 **ARTICLE VI**

### 9 **MISCELLANEOUS PROVISIONS**

#### 10 **Section 6.01: Amendments or Modification**

11 The terms and provisions of this Agreement may be amended or modified only by an express  
12 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

#### 13 **Section 6.02: Assignment**

14 None of the rights, commitments, or obligations recognized under this Agreement may be  
15 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written  
16 consent of all other Parties and their respective counsel. The representations, warranties, covenants,  
17 and agreements contained in this Agreement are for the sole benefit of the Parties under this  
18 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

#### 19 **Section 6.03: Governing Law**

20 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties  
21 shall be determined, in accordance with the laws of the State of California, without regard to conflicts  
22 of laws.

#### 23 **Section 6.04: Entire Agreement**

24 This Agreement, including the Exhibit A (Class Notice) referred to herein, which form an  
25 integral part hereof, contains the entire understanding of the Parties with respect to the subject matter  
26 contained herein. In case of any conflict between text contained in Articles I through VI of this  
27 Agreement and text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through  
28 VI) shall be controlling, unless the Exhibit is changed by or in response to a Court order. There are

1 no restrictions, promises, representations, warranties, covenants, or undertakings governing the  
2 subject matter of this Agreement other than those expressly set forth or referred to herein. This  
3 Agreement supersedes all prior agreements and understandings among the Parties with respect to the  
4 Settlement of the Action, including correspondence between Class Counsel and Defense Counsel  
5 and drafts of prior agreements or proposals.

6 **Section 6.05: Waiver of Compliance**

7 Any failure of any Party, Class Counsel, or Defense Counsel to comply with any obligation,  
8 covenant, agreement, or condition set forth in this Agreement may be expressly waived in writing,  
9 to the extent permitted under applicable law, by the Party or Parties and their respective counsel  
10 entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to  
11 insist upon strict compliance with any representation, warranty, covenant, agreement, or condition  
12 shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

13 **Section 6.06: Counterparts and Electronic Signatures**

14 This Agreement, and any amendments hereto, may be executed in any number of  
15 counterparts, and any Party and/or their respective counsel may execute any such counterpart, each  
16 of which when executed and delivered shall be deemed to be an original. All counterparts taken  
17 together shall constitute one instrument. A fax, PDF, or electronic signature on this Agreement shall  
18 be as valid as an original signature.

19 **Section 6.07: Meet and Confer Regarding Disputes**

20 Should any dispute arise among the Parties or their respective counsel regarding the  
21 implementation or interpretation of this Agreement, Class Counsel and Defense Counsel shall meet  
22 and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

23 **Section 6.08: Agreement Binding on Successors**

24 This Agreement will be binding upon, and inure to the benefit of, the successors in interest  
25 of each of the Parties.

26 **Section 6.09: Cooperation in Drafting**

27 The Parties have cooperated in the negotiation and preparation of this Agreement. This  
28 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,

1 was the drafter or participated in the drafting of this Agreement.

2       **Section 6.10: Fair and Reasonable Settlement**

3       The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of  
4 the Action and have arrived at this Agreement through arm's-length negotiation and in the context  
5 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties  
6 further believe that the Settlement is consistent with public policy, and fully complies with applicable  
7 law. The Parties further acknowledge that they are each represented by competent counsel and have  
8 had an opportunity to consult with their counsel regarding the fairness and reasonableness of this  
9 Settlement.

10       **Section 6.11: Headings**

11       The descriptive heading of any section or paragraph of this Agreement is inserted for  
12 convenience of reference only and does not constitute a part of this Agreement and shall not be  
13 considered in interpreting this Agreement.

14       **Section 6.12: Notice**

15       Except as otherwise expressly provided in the Agreement, all notices, demands, and other  
16 communications under this Agreement must be in writing and addressed as follows:

17               *To Plaintiffs and the Class:*  
18               Michael Nourmand  
19               James A. De Sario  
20               The Nourmand Law Firm APC  
21               8822 West Olympic Boulevard  
22               Beverly Hills, CA 90211  
23               mnourmand@nourmandlawfirm.com  
24               jdesario@nourmandlawfirm.com

25               And

26               *To Defendants:*  
27               Clifton Albright, Sr.  
28               Bryan E. Luther Jr.  
                Albright Yee & Schmit, APC  
                707 Wilshire Boulevard, Suite 3600  
                Los Angeles, CA 90017  
                clifton.albright@ayslaw.com  
                bryan.luther@ayslaw.com

1           **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

2           To the extent consistent with class action procedure, this Agreement shall be enforceable by  
3 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court  
4 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the  
5 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the  
6 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall  
7 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest  
8 extent to enforce and effectuate the terms and intent of this Agreement.

9           **Section 6.14: Mutual Full Cooperation**

10          The Parties agree fully to cooperate with each other to accomplish the terms of this  
11 Agreement, including but not limited to execution of such documents, and taking such other action  
12 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this  
13 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to  
14 effectuate this Agreement and its terms. In the event the Parties are unable to reach agreement on the  
15 form or content of any document needed to implement the Settlement, or on any supplemental  
16 provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to  
17 seek the assistance of the Court.

18          **Section 6.15: Authorization to Act**

19          Class Counsel represent and warrant that they are authorized by Plaintiff, and Defense  
20 Counsel warrants that they are authorized by Defendants to take all appropriate action required to  
21 effectuate the terms of this Agreement, except for signing documents, including but not limited to  
22 this Agreement, that are required to be signed by the Parties. Defendants represent and warrant that  
23 the individuals executing this Agreement on their behalf have the full right, power, and authority to  
24 enter into this Agreement and to carry out the transactions contemplated herein.

25          **Section 6.16: No Reliance on Representations**

26          The Parties have made such investigation of the facts and the law pertaining to the matters  
27 described herein and to this Agreement as they deem necessary, and have not relied, and do not  
28 rely, on any statement, promise, or representation of fact or law, made by any of the other Parties,

1 or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or  
2 asserted rights, or with regard to the advisability of making and executing this Agreement, or with  
3 respect to any other matters. No representations, warranties, or inducements, except as expressly  
4 set forth herein, have been made to any party concerning this Agreement.

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**EXECUTION BY PARTIES AND COUNSEL**

The Parties hereby execute this Agreement.

Dated: 05/12/2025

GASPAR BARAJAS HERNANDEZ

By: 

Dated: \_\_\_\_\_

KONOIKE-PACIFIC CALIFORNIA, INC.

By: \_\_\_\_\_

Dated: \_\_\_\_\_

KONOIKE-E STREET, INC.

By: \_\_\_\_\_

Approved as to form:

Dated: 05/12/2025

THE NOURMAND LAW FIRM APC

By: *Michael Nourmand*  
Michael Nourmand  
Attorneys for Plaintiff

Dated: \_\_\_\_\_

ALBRIGHT YEE & SCHMIT

By: \_\_\_\_\_  
Bryan Luther  
Attorneys for Defendants

EXECUTION BY PARTIES AND COUNSEL

The Parties hereby execute this Agreement.

Dated: \_\_\_\_\_

GASPAR BARAJAS HERNANDEZ

By: \_\_\_\_\_

Dated: 5/13/25

KONOIKE-PACIFIC CALIFORNIA, INC.

By: \_\_\_\_\_

Dated: 5/13/25

KONOIKE-E STREET, INC.

By: \_\_\_\_\_

Approved as to form:

Dated: \_\_\_\_\_

THE NOURMAND LAW FIRM APC

By: \_\_\_\_\_

Michael Nourmand  
Attorneys for Plaintiff

Dated: 5/13/2025

ALBRIGHT YEE & SCHMIT

By: \_\_\_\_\_

Bryan Luther  
Attorneys for Defendants