

1 Taras Kick (SBN 143379)

Taras@kicklawfirm.com

2 Greg Taylor (SBN 315128)

Greg@kicklawfirm.com

3 **THE KICK LAW FIRM, APC**

815 Moraga Drive

4 Los Angeles, California 90049

5 Telephone: (310) 395-2988

Facsimile: (310) 395-2088

6 Attorneys for Plaintiffs KENTOYA MITCHELL  
7 and DANA MILES, individually, and on behalf  
8 of all others similarly situated and aggrieved

9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

10 **CENTRAL DISTRICT — SPRING STREET COURTHOUSE**

11 KENTOYA MITCHELL and DANA MILES,  
12 individually, and on behalf of others similarly  
situated and aggrieved,

13 Plaintiffs,

14 vs.

15 PACIFIC INVESTMENT & MANAGEMENT,  
16 INC., a California Corporation; PREMIER  
INVESTORS GROUP, INC., a California  
17 Corporation; LINCOLN PETROLEUM INC., a  
California Corporation; FARHAD  
18 GHADOOSHAHY, a natural person; FARZAN  
GHADOOSHAHY, a natural person; and DOES 3  
through 50, inclusive,

19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No.: 20STCV43188

*Assigned for all purposes to the Hon. Elihu  
M. Berle, Dept. 6*

**DECLARATION OF TARAS KICK IN  
SUPPORT OF SUPPLEMENTAL  
MEMORANDUM IN SUPPORT OF  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL**

Continued Hearing Date: October 14, 2022

Continued Hearing Time: 10:00 a.m.

Department: SSC-6

Complaint filed: November 10, 2020

FAC filed: August 26, 2021

SAC filed: December 2, 2021

Trial date: None Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

I, Taras Kick, declare as follows:

1. I am an attorney licensed to practice before all courts of the State of California and a shareholder with The Kick Law Firm, APC. The following is based on my personal knowledge, and, if called as a witness, I could and would testify competently thereto.

2. This declaration is submitted in support of the Supplemental Memorandum in support of the unopposed Motion for Preliminary Approval of Class and Representative Action Settlement (“MPA”).

3. The parties conferred after the MPA hearing on August 25, 2022, and circulated and signed a Revised Settlement Agreement which they believe contains all of the revisions ordered by the Court. A true and correct copy of the fully executed Revised Settlement Agreement is attached as **Exhibit 1**. A true and correct redlined copy of the Revised Settlement Agreement is attached as **Exhibit 2**.

4. On September 9, 2022, my office is submitting a copy of the signed Revised Settlement Agreement and Supplemental Memorandum to the California Labor and Workforce Development Agency (“LWDA”). A true and correct copy of proof of submission to the LWDA will be attached as **Exhibit 3 after submission**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9<sup>th</sup> day of September 2022 at Los Angeles, California.

/s/ Taras Kick  
Taras Kick

# **EXHIBIT 1**

## **REVISED SETTLEMENT AND RELEASE AGREEMENT**

*Mitchell, et al. v. Pacific Investment & Management, Inc., et al.*  
LASC Case No. 20STCV43188

Plaintiffs Kentoya Mitchell and Dana Miles (“Plaintiffs”), individually, and on behalf of all others similarly situated, and Defendants Pacific Investment & Management, Inc., Premier Investors Group, Inc., Lincoln Petroleum Inc., Farhad Ghadooshahy, and Farzan Ghadooshahy (“Defendants”) (collectively “the Parties”) hereby enter into this Revised Settlement and Release Agreement (the “Agreement”), as provided below.

### **I. DEFINITIONS**

The terms of this Agreement are as follows:

1. “Action” means the lawsuit entitled *Mitchell, et al. v. Pacific Investment & Management, Inc., et al.*, filed in the Superior Court of the State of California for the County of Los Angeles on November 10, 2020, Case No. 20STCV43188.
2. “Aggrieved Employees” means all Settlement Class Members who worked for Defendants or any of the retail gasoline stations under the common ownership, management and/or corporate control of Defendants Farhad Ghadooshahy and/or Farzan Ghadooshahy, including the retail gasoline stations owned and/or operated by PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. (the “Fueling Stations”), during the PAGA Period.
3. “Attorneys’ Fees and Costs” refers to the fees and actual litigation costs incurred by Class Counsel and means one-third (33-1/3%) of the Gross Settlement Amount, or Five Hundred Forty-One Thousand, Three Hundred and Thirty-Three Dollars and Zero Cents (\$541,333.33), plus reimbursement of costs incurred.
4. “Class Counsel” refers to Taras Kick and Greg Taylor of The Kick Law Firm, APC.
5. “Class Data” refers to Settlement Class information provided by Defendants to the Class Administrator for purposes of distributing Individual Class Settlement Payments and Individual PAGA Settlement Payments. Such information includes Settlement Class Members’ names, phone numbers, addresses, dates of employment, and number of workweeks and/or pay periods worked during the Class Period.
6. “Class Period” means the period from November 10, 2016 to April 1, 2022.
7. “Class Representatives” means the named plaintiffs Kentoya Mitchell and Dana Miles.
8. “Court” refers to the Los Angeles County Superior Court.

9. “Defense Counsel” refers to Martin R. Fox, Megan A. Childress, and Elizabeth M. Martin of Bleau Fox A P.L.C.

10. “Effective Date” means the date on which both of the following have occurred: (i) final approval of the Settlement Agreement is granted by the Los Angeles County Superior Court, or other court of competent jurisdiction, and (ii) the Court’s Judgment approving the Settlement Agreement becomes final. “Final” means the latest of: (i) if there is an appeal of the Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court; or, (ii) if a petition for review is filed, the date of denial of the petition or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any appeal of the Judgment.

11. “Fairness Hearing” means the hearing at which the Court will determine whether the settlement terms are fair, reasonable, and adequate and meet all requirements for Final Approval of the Settlement Agreement.

12. “Final Approval Order” means the order by the Court approving the settlement following the Fairness Hearing and entering final judgment.

13. “Gross Settlement Amount” means the One Million, Six Hundred Twenty-Four Thousand Dollars and Zero Cents (\$1,624,000.00) payable by Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. to fund the settlement.

14. “Individual Class Settlement Payment” means the individual distribution of the Net Settlement Amount to each Participating Class Member, as defined in Section VIII(B), below.

15. “Individual PAGA Settlement Payment” means the individual distribution of the PAGA Award to each Aggrieved Employee, as defined in Section V.6., below.

16. “Net Settlement Amount” refers to the Gross Settlement Amount minus court-approved Attorneys’ Fees and Costs, Settlement Administration costs, Service Awards, and the PAGA Award.

17. “PAGA Award” means the Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) allocated to the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees.

18. “PAGA Period” means the period from September 1, 2019, to April 1, 2022.

19. “Participating Class Members” means all Settlement Class Members who do not timely and effectively opt out of the Settlement.

20. “Released Claims” means any and all claims during the Class Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in the operative complaint, including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages during employment; failure to pay all wages due upon separation of employment; failure to maintain and provide accurate records; meal and rest break violations; meal and rest break premiums; failure to indemnify employees for necessary expenditures incurred in discharge of duties; wage statement violations; violation of the Private Attorney General Act, civil and statutory penalties, interest, liquidated damages, attorney’s fees and costs, claims under California Labor Code sections 90.5, 201-203, 218.5, 226, 226.2, 226.7, 351, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1193.6, 1194, 1194.2, 1197, 1199, 2698-2699.5, and all applicable Industrial Welfare Commission Wage Orders, California Code of Civil Procedure section 1021.5, and claims under California Business & Professions Code sections 17200-17205. It is understood and agreed that Released Claims do not include claims for workers’ compensation, unemployment, or disability benefits of any nature, nor any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*; and all of their implementing regulations and interpretive guidelines.

21. “Service Award” means the Ten Thousand Dollars and Zero Cents (\$10,000.00) payable to each Plaintiff for her service to the Settlement Class as a Class Representative, for a total amount of Twenty Thousand Dollars and Zero Cents (\$20,000).

22. “Settlement Administration Costs” refers to the costs and expenses incurred by the Settlement Administrator in the performance of its tasks and duties as provided by this Agreement.

23. “Settlement Administrator” means the lower bidder of two administrators to whom the administration service for this matter has been put out to bid.

24. “Settlement Class” and “Settlement Class Members” refer to all current and former non-exempt employees who worked in California for Defendants and/or any of the Fueling Stations during the Class Period and are co-extensive with Aggrieved Employees.

25. “Settlement Fund” means the account created by the Settlement Administrator for purposes of administering this Agreement and distributing the Gross Settlement Amount.

## **II. RECITALS**

1. On November 10, 2020, Plaintiff Mitchell filed the Action on behalf of herself and all others similarly situated. The Action alleged against Defendants Pacific Investment & Management, Inc., Premier Investors Group, Inc., and Lincoln Petroleum Inc. the following causes of action: 1) failure to pay minimum wages; 2) failure to pay overtime wages; 3) failure to provide meal periods; 4) failure to provide rest periods; 5) failure to reimburse for necessary business

expenses; 6) failure to furnish accurate wage statements; 7) failure timely to pay all wages do to discharged and quitting employees; 8) unfair and unlawful business practices under the Unfair Competition Law (“UCL”), Bus & Prof. Code § 17200, *et seq.*; and 8) violation of PAGA, Lab. Code § 2698, *et seq.*

2. On June 3, 2021, the Court ordered that the scope of the putative class for discovery purposes included all employees “who worked at any one of the Defendants’ ‘Fueling Stations’ during the putative class period of November 10, 2016 to the present, which include the retail gasoline stations under the common ownership, management and/or corporate control of Messrs. Farhad Ghadooshahy and Farzan Ghadooshahy, and regardless of the legal entities whose names appear on putative class members’ wage statements for the work performed.”

3. On August 26, 2021, Plaintiff Mitchell filed a First Amended Complaint (“FAC”), adding as named parties Plaintiff Miles and Defendants Farzan Ghadooshahy and Farhad Ghadooshahy. The Action was re-filed on December 2, 2021 as the Second Amended Complaint (“SAC”) to cure defective service of the FAC.

4. The Parties agreed to mediate the claims at issue and engaged in preparatory discovery, which exchange included Defendants’ providing a significant sampling of time and payroll records, Settlement Class Members’ personnel files, and Defendants’ written policies. The discovery exchanged included relevant time and payroll records for employees of the Fueling Stations.

5. The Parties participated in a full day of mediation session with Lynn Frank, Esq., on February 3, 2022. Additional information was exchanged during the mediation. With Ms. Frank’s assistance, the Parties reached a settlement in principle, which included the material terms contained herein.

6. Neither this Settlement Agreement and Release (“the Agreement”) nor any document referred to or contemplated herein, nor any action taken to carry out the terms of the Agreement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendants of evidence of any unlawful conduct, fault, wrongdoing, or liability with respect to the Action.

7. The Parties now desire to fully, finally, and forever settle, compromise, and discharge the claims released herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

### **III. NON-ADMISSION OF LIABILITY**

1. By entering into this Agreement, Defendants, on behalf of themselves and all Released Parties, deny any liability for any of the claims alleged in the Action or any potential or unknown claims based on wage and hour violations during the Class Period under state or federal law.

2. Defendants specifically deny that they or any of the Released Parties have engaged in any unlawful or wrongful conduct against Plaintiffs or the Settlement Class.

3. Defendants contend further that, for purposes other than settlement, the Action is not appropriate for class treatment.

4. The Parties understand and agree that this Settlement is the result of a good faith compromise of disputed claims and allegations, and Defendants are entering into this Settlement solely to resolve disputed matters. No part of this Settlement or any conduct or written or oral statements made in connection with this Settlement, whether or not the Settlement is finally approved and/or consummated, is or may be offered as or construed to be an admission or concession of any kind by any of the Parties. In particular, but without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission that Defendants violated any of its obligations under the California Labor Code, applicable Industrial Welfare Commission Wage Orders, Business and Professions Code or Private Attorney General Act, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties. In addition, this Settlement shall not be offered or be admissible in evidence against any of the Parties or any of the Released Parties, except in any action or proceeding brought by or against Plaintiffs, the Settlement Class Members, or Defendants to enforce the Settlement's terms, or by Defendants in defense of any claims brought by Plaintiffs or the Settlement Class Members. The provisions of this paragraph shall become effective when this Settlement is signed by all Parties, and shall be binding on the Parties and their counsel regardless of whether the Settlement is preliminarily and/or finally approved or terminated for any reason, or rendered null and void.

### **IV. STIPULATION TO CONDITIONAL CLASS CERTIFICATION SOLELY FOR PURPOSES OF THE SETTLEMENT**

1. This Agreement is contingent upon certification of the Settlement Class by the Court pursuant to California Code of Civil Procedure Section 382. Defendants do not waive, and expressly reserve, the right to challenge the propriety of class or collective action certification, or any other representative treatment of Plaintiffs' claims, for any other purpose, should the Court deny certification of the Settlement Class.

2. The Parties stipulate to conditional and class certification for purpose of settlement only. If the Court does not grant preliminary and final approval of the Agreement, the conditional class certification shall immediately be set aside and the Parties will resume litigation as if no settlement had been reached.

3. The Parties' willingness to stipulate to conditional class certification as part of the Settlement shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in a non-settlement context in this Action, and shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in any other lawsuit. Evidence of this stipulation and Agreement for settlement purposes only will not be deemed admissible for any other purpose in this or any other proceeding.

Defendants expressly reserve their right to oppose class certification should this Settlement be modified or reversed on appeal or otherwise not become final and effective for any reason.

## **V. TERMS OF SETTLEMENT**

### **1. Gross Settlement Amount**

A. Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc., shall fund the settlement with a payment of \$1,624,000. This **Gross Settlement Amount** ("GSA") shall include all payments made to Participating Class Members and Aggrieved Employees for wages, penalties, interest, and liquidated damages, Attorneys' Fees of one-third of the GSA or \$541,333.33, reimbursement of Litigation Costs not to exceed \$30,000, Settlement Administration Costs not to exceed \$9,600, Service Awards of \$10,000 for each Class Representative (for a total of \$20,000), and the PAGA Award of \$75,000. After these deductions from the Gross Settlement Amount, the net settlement amount will be approximately \$948,066.67. All legally required employer side payroll taxes (*e.g.*, FICA, FUTA, etc.) shall be paid by Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc., from outside, and in addition to, the Gross Settlement Amount. Under no other circumstances shall Defendants and/or PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. be required to pay more than the Gross Settlement Amount except as provided for in this Settlement.

B. The Gross Settlement Amount is defined based on Defendants' representations that, during the Class Period, there were approximately 779 Settlement Class Members who worked approximately 58,000 pay periods during the Class Period.

## **2. Attorneys' Fees And Costs**

A. Class Counsel shall request that the Court approve an award of attorneys' fees in an amount of one-third (33-1/3%) of the Gross Settlement Amount (\$541,333.33) plus all reasonable litigation costs in an amount not to exceed \$30,000, to be paid out of the Gross Settlement Amount. Defendants will not oppose this request.

B. The Court's approval of the Attorneys' Fees and Costs requested by Class Counsel is not a material term of the Agreement. If the Court does not approve the amount requested, or approves a lesser amount, the remaining terms of the Agreement shall remain in force and effect. A denial by the Court of Class Counsel's request for Attorneys' Fees and Costs shall not be construed as a basis from which to abrogate the Agreement.

## **3. Service Awards**

A. Subject to Court approval, Plaintiffs will request Service Awards in an amount not to exceed \$10,000 to each Plaintiff for her service as a Class Representative, to be paid from the Gross Settlement Amount. Defendants will not oppose this request. Any such Service Award shall be made separate from, and in addition to, any payment to which Plaintiffs may otherwise be entitled as Participating Class Members. Each respective Service Award shall be allocated as 1099 income, which shall not be subject to payroll taxes and withholdings and will be reported on an IRS 1099 Form.

B. The Class Representatives will be responsible for characterizing this compensation correctly for tax purposes and for paying any taxes owing.

## **4. Settlement Administration Costs**

The Parties have selected Simpluris, Inc. as the third-party Settlement Administrator, which will disseminate the Notice of Class Action Settlement ("Class Notice"), an initial draft of which is attached hereto as "**Exhibit A**," and to perform all tasks and duties necessary to fulfill the Agreement, including, the formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class (including Spanish translations thereof), processing and maintaining the Class Data, updating mailing addresses for members of the Settlement Class before the initial mailing of the Class Notice, calculating estimated Individual Class Settlement Payments, Individual PAGA Settlement Payments, declarations regarding administration as may be required by the Court, providing weekly status reports, resolving disputed claims, issuing Individual Class Settlement Payment checks and Individual PAGA Settlement checks, tax reporting, and managing uncashed checks. Simpluris, Inc. has agreed to cap its settlement administration costs at \$9,600.

## **5. Net Settlement Amount**

After deducting from the Gross Settlement Amount ("GSA") the Court-approved amounts for the Service Awards of \$10,000 each (for a total of \$20,000), Attorneys' Fees of one-third of the GSA or \$541,333.33 and Litigation Costs in an amount not to exceed \$30,000, the PAGA Award of \$75,000, and Settlement Administration Costs not to exceed \$9,600, the remaining balance, or Net Settlement Amount of approximately \$948,066.67, will be distributed to

Participating Class Members *pro rata* based on individual's total workweeks as a percentage of the total number of workweeks the Settlement Class worked during the Class Period.

**6. PAGA Award**

A. The PAGA Award in the amount of \$75,000 shall be allocated as follows:

i. 75% of the PAGA Award, or Fifty-Six Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$56,250.00), shall be paid to the LWDA as penalties on behalf of all Aggrieved Employees.

ii. 25% of the PAGA Award, or Eighteen Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$18,750), shall be distributed on a *pro rata* basis to Settlement Class Members as Individual PAGA Settlement Payments.

iii. Individual PAGA Settlement Payments will be calculated and distributed as follows:

(a) The total number of weeks worked during the PAGA Period by all Aggrieved Employees will be referred to as "the Total PAGA Workweeks."

(b) The payment to each Aggrieved Employee will be made *pro rata* based on the number of weeks worked by the Aggrieved Employee during the PAGA Period.

(c) The amount to be paid for weeks worked by a Aggrieved Employee shall be calculated by dividing Eighteen Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$18,750) by the Total PAGA Workweeks.

iv. Defendants' payroll records for Aggrieved Employees shall be determinative for purposes of calculating the Total PAGA Workweeks and each Individual PAGA Settlement Payment, absent proof to the contrary.

B. The Parties agree that there is no statutory right for aggrieved employees to be heard in objection to the PAGA Award and there is no statutory requirement to provide aggrieved employees the option to opt out of the PAGA Award. All PAGA Settlement Payments will be paid by the Settlement Administrator, and no Aggrieved Employee can opt out of or object to the PAGA Award and allocations.

**VI. RELEASE**

**1. Parties Released**

A. "Released Parties" refers to Defendants and their former or present agents, business managers, parents, subsidiaries, successors, predecessors, affiliates, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health,

and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

B. Released Parties expressly includes the following entities: PFG Guadalupe Inc.; PFG Arroyo Grande Inc.; PFG Buellton Inc.; Pacific Chevron; Wilshire Chevron; Santa Monica & 14th; Brentwood Petroleum Inc.; Culver Investment Corp.; Westwood Petroleum Inc.; Laguna Beach Oil Inc.; Main St Fuels Inc.; OC Fuels Inc.; Buena Park Oil; PFG Ontario Inc.; San Diego Oil Inc.; Park Petroleum Inc.; Chula Vista Inc.; PFG San Diego Inc.; and PFG San Ysidro Inc. (collectively "the Fueling Stations"), and their former or present agents, business managers, parents, subsidiaries, successors, predecessors, affiliates, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

## **2. Claims Released By The Settlement Class**

A. On Final Approval of the settlement and this Agreement by the Court, and except as to the right to enforce the terms and conditions of this Agreement, all Settlement Class Members who do not timely and effectively opt out of the Settlement Class shall be deemed to have fully released, settled, compromised, relinquished and discharged the Released Parties from the Released Claims for the Class Period. This release occurs only when full payment has been made by Defendants per the terms of this Settlement Agreement.

## **3. Claims Released By The Aggrieved Employees**

A. On Final Approval of the settlement and this Agreement by the Court, and except as to the right to enforce the terms and conditions of this Agreement, all Aggrieved Employees (including those who timely and effectively opt out of the Settlement Class) shall be deemed to have fully released and discharged the Released Parties from any and all known and unknown claims for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.*, that were or could have been pled based on the allegations of the operative complaint and/or the PAGA Notice letters that Plaintiffs submitted to the LWDA on September 1, 2020, December 12, 2020, and July 16, 2021, for the PAGA Period. This release occurs only when full payment has been made by Defendants per the terms of this Settlement Agreement.

## **4. Additional Claims Released By The Class Representatives**

A. In addition to the Released Claims, on the final approval of the settlement and this Agreement by the Court, the Class Representatives shall be deemed to have generally released all claims against the Released Parties. This general release of claims includes claims arising from the employment relationship with the Released Parties, or the termination thereof, including claims for discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 *et seq.*, or any claims for violation of public policy. For the

purpose of implementing a full and complete release and discharge of the Released Parties, the Class Representatives expressly acknowledges that the release in this Paragraph is intended to include in its effect all claims they did not know or suspect at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under this Agreement is also for the release of those claims and contemplates their extinguishment. In furtherance of this settlement, the Class Representatives expressly waives all rights provided by California Civil Code section 1542 that they may have against any of the Released Parties. Section 1542 states:

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

B. This general release and waiver of rights under California Civil Code Section 1542 shall include all claims based on conduct or omissions that occurred at any time for the period from November 10, 2016, through the date of the Effective Date.

C. Plaintiffs acknowledge that Plaintiffs may hereafter discover claims or facts in addition to or different from those which Plaintiffs now know or believe to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, Plaintiffs hereby waive any right, claim or cause of action that might arise as a result of such different or additional claims or facts. Plaintiffs acknowledge that Plaintiffs understand the significance and consequence of such release and such specific waiver of Section 1542.

## **5. Compliance with Older Workers Benefit Protection Act**

Plaintiff Dana Miles, being 40 years of age or older, expressly acknowledges and agrees that, by entering into this Agreement, she is waiving any and all rights or claims that Plaintiff Dana Miles may have arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 et seq.), as amended, that have arisen on or before the date of execution of this Agreement. Plaintiff Dana Miles further expressly acknowledges and agrees that:

A. In return for this Agreement, Plaintiff Dana Miles will receive compensation beyond that which Plaintiff was already entitled to receive before entering into this Agreement;

B. Plaintiff Dana Miles was orally advised and is again hereby advised in writing by this Agreement to consult with an attorney before signing this Agreement;

C. Plaintiff Dana Miles was given a copy of this Agreement on 9/2/22, 2022, and informed that Plaintiff has 21 days within which to consider the Agreement; and

D. Plaintiff Dana Miles was informed that she has seven days following the date of execution of the Agreement in which to revoke the Agreement. Any revocation of the Agreement must be in writing and hand delivered to Defendants' counsel during the revocation

period. Given the foregoing, this Agreement shall not become effective or enforceable any earlier than seven (7) days following the date Plaintiff Dana Miles executes this Agreement.

## **VII. NOTICE TO MEMBERS OF THE SETTLEMENT CLASS**

### **1. Class Data**

No more than fourteen (14) calendar days after the entry of the preliminary approval order, Defendants shall provide the Settlement Administrator with the Class Data in the form of a list containing the names, employee identification numbers, last known addresses, inclusive dates of active employment during the Class Period, and social security numbers for each Settlement Class Member. The Settlement Administrator will calculate the number of weeks each Settlement Class Member worked based on the Class Data provided. The Class Data is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall take all necessary precautions to maintain its confidentiality. The Settlement Administrator shall not share the Class Data with any other party or counsel for any of the Parties. The information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement.

### **2. Initial Mailing**

Within ten (10) calendar days of receipt of the Class Data from Defendants, the Settlement Administrator will send a Class Notice to each Settlement Class Member.

### **3. No Claims Forms**

No claim form is required to receive a proportionate Individual Class Settlement Payment or Individual PAGA Settlement Payment. The Settlement Administrator will calculate and mail all individual payments to each Participating Class Member and/or Aggrieved Employee.

### **4. Re-Mailing**

A. To provide the best notice practicable, any Class Notice returned to the Settlement Administrator as non-deliverable with a forwarding mailing address affixed shall be sent by First Class U.S. Mail to the address so affixed. If a Class Notice is returned as undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a current mailing address for the Settlement Class Member by skip trace and will mail the Class Notice to the updated address identified. If no current address can be identified, the Class Notice for that Settlement Class Member will be deemed undeliverable.

B. On the remailing of Class Notices by the Settlement Administrator to an updated mailing address, whether found through skip-tracing, provided by Class Counsel, or as provided by the Settlement Class Member (on the submission of a Change of Address form), the Settlement Administrator shall keep a record of the postmark mailing dates for such re-mailed Class Notices, and record all undelivered Class Notices.

5. Compliance with the procedures specified in the foregoing paragraphs of this Section of this Agreement shall constitute due and sufficient notice to Settlement Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defendants' Counsel to provide notice of the proposed Settlement.

## **VIII. SETTLEMENT FUND AND DISTRIBUTION**

### **1. Creation Of Settlement Fund**

A. The Settlement Administrator shall establish a Settlement Fund for purposes of administering the Agreement. The Settlement Administrator shall furnish the Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendants.

B. Within thirty (30) calendar days of the Effective Date, Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. shall deposit the Gross Settlement Amount into the Settlement Fund.

### **2. Calculation Of Individual Class Settlement Payments**

A. The portion of the Settlement Fund available for Individual Class Settlement Payments to Participating Class Members shall be distributed as follows:

- i. The total number of weeks worked during the Class Period by all Participating Class Members will be referred to as "the Total Workweeks."

- ii. The payment to each Participating Class Member will be made *pro rata* based on the number of weeks worked by the Participating Class Member during the Class Period.

- iii. The amount to be paid for weeks worked by a Participating Class Member shall be calculated by dividing the Net Settlement Amount by the Total Workweeks.

- iv. Defendants' payroll records for Participating Class Members shall be determinative for purposes of calculating the Total Workweeks and each Individual Class Settlement Payment, absent proof to the contrary.

### **3. Escalator Clause**

A. This settlement was entered into based on Defendants' representation that there are 779 Settlement Class Members who worked approximately 58,000 weeks during the Class Period.

B. If the total number of workweeks for the Class Period exceeds 63,800, then the Gross Settlement Amount shall be increased proportionally based on the number of workweeks in excess of 63,800 in the amount of \$28.00 per workweek. For example, if the number of workweeks is 63,801, the Gross Settlement Amount to be paid by Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. shall increase by \$28.00. Under no other circumstances shall Defendants and/or PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. be required to pay more than the Gross Settlement Amount except as provided for in this Settlement.

#### **4. Distribution To Participating Class Members and/or Aggrieved Employees**

A. Within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund, the Settlement Administrator shall distribute the Individual Class Settlement Payments and Individual PAGA Settlement Payments by check to Participating Class Members and/or Aggrieved Employees.

B. If any check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) shall be voided by the Settlement Administrator. The Parties agree that the Settlement Fund is non-reversionary, and 100% of the residual from uncashed or undeliverable checks shall be distributed to a *cy pres* recipient approved by the Court, with one proposed recipient for 50% nominated by Plaintiffs and one proposed recipient for 50% nominated by Defendants, subject to Court approval, without further amendment to this Agreement.

C. The Settlement Administrator shall furnish its own Employer Identification Number and calculate all Individual Class Settlement Payments and Individual PAGA Settlement Payments, including any payroll deductions, based on the confidential Class Data provided by Defendants. The Settlement Administrator will prepare all necessary tax reporting and documentation with respect to payments made pursuant to this Agreement. The Settlement Administrator will provide the requisite IRS Forms W2 and 1099 to Participating Class Members and Aggrieved Employees with all payments. The tax documents shall reflect payment for the year in which payment is made pursuant to this Agreement.

i. Allocation of individual payments to Participating Class Members shall be reported for tax purposes as follows: 20% as wages on IRS Form W-2; and 10% as civil penalties, premiums and/or waiting time penalties and 70% as interest on IRS Form 1099.

ii. For the portion of the Individual Class Settlement Payment allocated to wages, the Settlement Administrator shall be responsible for calculating and

submitting the appropriate amount of the employees' share of payroll taxes and withholdings to the appropriate state and federal tax authorities.

iii. Allocation of Individual PAGA Settlement Payments to Aggrieved Employees shall be reported for tax purposes as follows: 10% as penalties and 90% as interest on IRS Form 1099.

D. Within twenty (20) business days after the Effective Date, the Settlement Administrator shall distribute the Service Awards to the Class Representatives.

E. None of the payments made pursuant to this Agreement will be considered for purposes of determining eligibility for, vesting or participation in, calculation of, or contributions to any welfare or benefit plans, including, without limitation, all plans, subject to ERISA. The Parties agree that these payments do not represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

## **5. Workweek Disputes**

A. If a Settlement Class Member disputes the number of Workweeks preliminarily assigned by the Settlement Administrator, the Settlement Class Member must timely submit a valid written Workweek Dispute to the Settlement Administrator no later than thirty (30) days from the date of the mailing by the administrator.

B. The Workweek Dispute should state that the Settlement Class Member received the Class Notice and include the number of weeks the Settlement Class Member contends he or she worked during the Class Period and/or the PAGA Period. The Workweek Dispute must be supported with documents showing the number of weeks worked and state the Settlement Class Members' full name and address and the approximate dates of employment with Defendants or at one or more of the Fueling Stations in California.

C. Disputes submitted within ten (10) days prior to final approval will be resolved prior to final approval.

D. Defendants' records will be presumed accurate. If a Settlement Class Member disputes Defendants' records, he or she has the burden of proof to establish otherwise.

## **6. Attorneys' Fees And Costs**

The Settlement Administrator shall distribute to Participating Class Members and/or Aggrieved Employees their portions of the Settlement Fund owed under this Agreement within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund. Within five (5) calendar days after that, the Settlement Administrator shall distribute \$56,250 to the LWDA, meaning 75% of the PAGA penalties. Within five (5) calendar days after that, the Settlement Administrator shall distribute attorneys' fees to Class Counsel of \$541,333.33,

meaning one-third (33-1/3%) of the Gross Settlement Amount and reimbursement of costs to Class Counsel, in an amount not to exceed \$30,000, Settlement Administration Costs to itself in an amount not to exceed \$9,600, and Service Awards to the Class Representatives of \$10,000 each (for a total of \$20,000 in Service Awards).

**7. Settlement Administration Costs**

Within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund, the Settlement Administrator shall deduct the Court-approved sum for payment of its fee and costs for administering the Settlement pursuant to its terms.

**8. *Cy Pres* Recipient**

Because the Settlement Fund is non-reversionary, subject to Court approval, any residual funds from checks that remain uncashed or undeliverable shall be donated to the *cy pres* recipient(s) approved by the Court.

**IX. OBJECTIONS AND EXCLUSIONS**

**1. Exclusion From The Settlement Class**

A. Settlement Class Members who wish to exclude themselves from the Settlement Class (“opt-out”) may use the procedure set forth in the Class Notice. A request to opt-out of the Settlement Class will be deemed timely if postmarked no later than sixty (60) days after the initial mailing of the Class Notice (“Opt-Out Request”).

B. The Opt-Out Request should state that the Settlement Class Member wants to be excluded from the Settlement Class and include the Settlement Class Member’s full name and address and the approximate dates of employment with Defendants or at one or more Fueling Stations in California.

C. Settlement Class Members who timely opt-out may not submit an objection to the Agreement.

D. The Parties agree there is no statutory requirement to provide Aggrieved Employees the option to opt out of the PAGA Award. All Aggrieved Employees (including those who timely and effectively opt out of the Settlement Class) will receive Individual PAGA Settlement Payments.

**2. Objections To The Settlement**

A. The Parties agree that there is no statutory right for Aggrieved Employees to be heard in objection to the PAGA Award. All Aggrieved Employees (including those who timely and effectively opt out of the Settlement Class) will receive Individual PAGA Settlement Payments.

B. Settlement Class Members who object to the settlement and this Agreement should submit written objections using the procedures set forth in the Class Notice, postmarked no later than sixty (60) calendar days after the Class Notice is mailed.

C. The objection should state that the Settlement Class Member is providing notice of his or her intent to appear at the Fairness Hearing and list each specific objection and any legal support. The objection must also include the Settlement Class Member's full name and address and the approximate dates of employment with Defendants or at one or more of Fueling Stations in California.

D. Participating Class Members may also appear at the Fairness Hearing to present any objections.

3. **Defendants' Option to Terminate Settlement.**

If, after the deadline for Settlement Class Members to exclude themselves from the Settlement and before the Fairness Hearing, fifteen percent (15%) or more of the number of Settlement Class Members submit timely and valid Opt-Out Requests from the Settlement, Defendants shall have, in their sole discretion, the option to terminate this Settlement. The Settlement Administrator must provide Defendants with the number and percentage of valid and timely Opt-Out Requests no later than twenty-one (21) calendar days prior to the Fairness Hearing. Defendants shall exercise its option to terminate, if they wish, no later than five (5) calendar days prior to the Fairness Hearing. If Defendants decide to void the Settlement, then the Settlement and conditional class certification shall be considered void, and neither the Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Should Defendants void the Settlement under this paragraph, Defendants shall be responsible for all Settlement Administration Costs incurred by the Settlement Administrator through the date that Defendants notify the Settlement Administrator that they are exercising the option to terminate the Settlement.

**X. SCHEDULE FOR PRELIMINARY AND FINAL APPROVAL**

**1. Procedures For Court Approval**

The following procedures for obtaining the Court's approval shall be implemented with respect to the Settlement, notice to the Settlement Class, and all benefits provided under this Agreement:

**A. Request for Approval**

Class Counsel will prepare a motion for preliminary approval, which Class Counsel will file with the Court.

**B. PAGA Claims**

Class Counsel shall submit the proposed settlement to the LWDA at the same time it is submitted to the court, pursuant to Lab. Code, § 2699 (l)(2). Within ten (10) days of entry of an Order that awards or denies PAGA penalties, Class Counsel shall submit a copy to the LWDA, pursuant to Lab. Code, § 2699 (l)(3).

### **C. Stay of all Litigation**

As of April 13, 2022, and pending preliminary and final approval of the Settlement, the Parties agree that there will be a stay of all litigation activity not reasonably necessary for approval by the Court of this Agreement and all terms herein.

### **2. Duties of the Parties Following Final Court Approval**

Following final approval of the settlement and this Agreement, Class Counsel will submit a mutually agreeable [proposed] Final Order and Judgment approving the Agreement, adjudicating the terms thereof to be fair, adequate, and reasonable, directing consummation of all terms and provisions, and, without affecting the finality of the Order Granting Final Approval and Judgment, allowing the Court to retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Final Approval Order and the Agreement, pursuant to C.C.P. § 664.6. The executed Final Order and Judgment shall be posted on the Settlement Administrator's website.

## **XI. MISCELLANEOUS PROVISIONS**

### **1. Tax Treatment And Tax Indemnification**

Defendants, Class Counsel, and Defense Counsel do not, and will not, give any tax advice in connection with the Settlement or any payments to be made pursuant to this Agreement. Participating Class Members and/or Aggrieved Employees are responsible for characterizing the Individual Class Settlement Payments and Individual PAGA Settlement Payments correctly for tax purposes and paying taxes due, if any.

### **2. Mutual Full Cooperation**

The Class Representatives, Defendants, Class Counsel, and Defense Counsel agree to cooperate fully with each other to accomplish the terms of this Agreement, including execution of necessary documents and other such other action as may reasonably be necessary to implement the terms herein.

### **3. Neutral Employment Reference**

If they receive any request, whether oral or written, from prospective employers or other persons about either Plaintiff, Defendants shall provide a neutral and objective employment reference. Defendants shall not refer to the Action or the Settlement.

**4. Parties' Authority**

The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Class Representatives, the Settlement Class, Aggrieved Employees, the LWDA, and Defendants to all terms stated herein.

**5. Binding Nature of the Agreement**

A. This Settlement shall bind the Parties and all Settlement Class Members, subject to the terms and conditions set forth in the Settlement and the Court's approval.

B. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. The Class Representatives represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or encumbered, any of the Released Claims.

C. This Agreement shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law. Notwithstanding the foregoing, this Agreement may not be admitted into evidence or used in any proceeding except an action, motion or proceeding to approve, interpret, or enforce the terms of this Agreement.

D. Material amendments to this Agreement may be made only by a written instrument signed by Class Counsel, the Class Representatives, Defense Counsel, and Defendants, and such changes may only be made with Court approval. The Class Representatives and Defendants authorize their respective counsel to make any ministerial amendments or modifications to this Agreement, including formatting changes, typographic corrections, and any necessary revisions to the draft Class Notice documents attached hereto, by way of written instrument signed by Class Counsel and Defense Counsel on their respective clients' behalf. No rights under this Agreement may be waived except in writing.

**6. Joint Drafting of Settlement Documents**

A. Class Counsel and Defense Counsel have arrived at this Agreement through a series of informed and arm's-length negotiations, including mediation, and taking into account all relevant factors, present and potential.

B. This Agreement has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Parties.

**7. Execution of the Agreement**

This Agreement may be executed in one or more counterparts and by facsimile. All executed copies of this Agreement, and photocopies thereof, shall have the same force and effect and shall be as legally binding and enforceable as the original.

**8. Continuing Jurisdiction**

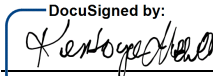
The Court shall retain jurisdiction over the implementation of this Agreement and all matters arising out of, or related to, its implementation.

**9. Disputes**

Any dispute arising out of or relating to this Agreement that cannot be resolved by the Parties will be submitted to Lynn Frank, Esq., for resolution, including potential further mediation. The Parties will split the mediator's costs, and all Parties will bear their own attorneys' fees and other costs incurred. Nothing in this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs incurred as part of the Gross Settlement Amount.

*[Signatures On Next Page]*

Date: September 7, 2022

By:   
Kentoya Mitchell  
Plaintiff and Class Representative

Date: September 7, 2022

By:   
Dana Miles  
Plaintiff and Class Representative

Date: September \_\_, 2022

By: \_\_\_\_\_  
Farhad Ghadooshahy

Individually and as corporate representative of Defendants PACIFIC INVESTMENT & MANAGEMENT, INC., PREMIER INVESTORS GROUP, INC., LINCOLN PETROLEUM INC., PFG GUADLUPE INC., PFG ARROYO GRANDE INC., PFG BUELLTON INC., PACIFIC CHEVRON, WILSHIRE CHEVRON, SANTA MONICA & 14TH, BRENTWOOD PETROLEUM INC., CULVER INVESTMENT CORP., WESTWOOD PETROLEUM INC., LAGUNA BEACH OIL INC., MAIN ST FUELS INC., OC FUELS INC., BUENA PARK OIL, PFG ONTARIO INC., SAN DIEGO OIL INC., PARK PETROLEUM INC., CHULA VISTA INC., PFG SAN DIEGO INC., PFG SAN YSIDRO INC.

Date: September \_\_, 2022

By: \_\_\_\_\_  
Farzan Ghadooshahy

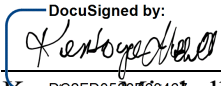
APPROVED AS TO FORM ONLY:

Date: September 7, 2022

**THE KICK LAW FIRM, APC**

By:   
Taras Kick  
Attorneys for Plaintiffs

Date: September 7, 2022

By:   
Kentoya Mitchell  
Plaintiff and Class Representative

Date: September 7, 2022

By:   
Dana Miles  
Plaintiff and Class Representative

Date: September \_\_, 2022

By: \_\_\_\_\_  
Farhad Ghadooshahy

Individually and as corporate representative of Defendants PACIFIC INVESTMENT & MANAGEMENT, INC., PREMIER INVESTORS GROUP, INC., LINCOLN PETROLEUM INC., PFG GUADLUPE INC., PFG ARROYO GRANDE INC., PFG BUELLTON INC., PACIFIC CHEVRON, WILSHIRE CHEVRON, SANTA MONICA & 14TH, BRENTWOOD PETROLEUM INC., CULVER INVESTMENT CORP., WESTWOOD PETROLEUM INC., LAGUNA BEACH OIL INC., MAIN ST FUELS INC., OC FUELS INC., BUENA PARK OIL, PFG ONTARIO INC., SAN DIEGO OIL INC., PARK PETROLEUM INC., CHULA VISTA INC., PFG SAN DIEGO INC., PFG SAN YSIDRO INC.

Date: September \_\_, 2022

By: \_\_\_\_\_  
Farzan Ghadooshahy

APPROVED AS TO FORM ONLY:

Date: September 7, 2022

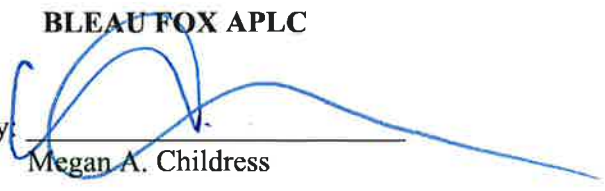
**THE KICK LAW FIRM, APC**

By:   
Taras Kick  
Attorneys for Plaintiffs

APPROVED AS TO FORM ONLY:

Date: September 9, 2022

**BLEAU FOX APLC**

By: 

Megan A. Childress

Attorneys for Defendants

# **EXHIBIT 2**

## **REVISED SETTLEMENT AND RELEASE AGREEMENT**

*Mitchell, et al. v. Pacific Investment & Management, Inc., et al.*  
LASC Case No. 20STCV43188

Plaintiffs Kentoya Mitchell and Dana Miles (“Plaintiffs”), individually, and on behalf of all others similarly situated, and Defendants Pacific Investment & Management, Inc., Premier Investors Group, Inc., Lincoln Petroleum Inc., Farhad Ghadooshahy, and Farzan Ghadooshahy (“Defendants”) (collectively “the Parties”) hereby enter into this **Revised** Settlement and Release Agreement (the “Agreement”), as provided below.

### **I. DEFINITIONS**

The terms of this Agreement are as follows:

1. “Action” means the lawsuit entitled *Mitchell, et al. v. Pacific Investment & Management, Inc., et al.*, filed in the Superior Court of the State of California for the County of Los Angeles on November 10, 2020, Case No. 20STCV43188.
2. “Aggrieved Employees” means all Settlement Class Members who worked for Defendants or any of the retail gasoline stations under the common ownership, management and/or corporate control of Defendants Farhad Ghadooshahy and/or Farzan Ghadooshahy, including the retail gasoline stations owned and/or operated by PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. (the “Fueling Stations”), during the PAGA Period.
3. “Attorneys’ Fees and Costs” refers to the fees and actual litigation costs incurred by Class Counsel and means one-third (33-1/3%) of the Gross Settlement Amount, or Five Hundred Forty-One Thousand, Three Hundred and Thirty-Three Dollars and Zero Cents (\$541,333.33), plus reimbursement of costs incurred.
4. “Class Counsel” refers to Taras Kick, ~~Karen L. Wallace, and Sam Vahedi~~ and Greg Taylor of The Kick Law Firm, APC.
5. “Class Data” refers to Settlement Class information provided by Defendants to the Class Administrator for purposes of distributing Individual Class Settlement Payments and Individual PAGA Settlement Payments. Such information includes Settlement Class Members’ names, phone numbers, addresses, dates of employment, and number of workweeks and/or pay periods worked during the Class Period.
6. “Class Period” means the period from November 10, 2016 to April 1, 2022.
7. “Class Representatives” means the named plaintiffs Kentoya Mitchell and Dana Miles.

8. “Court” refers to the Los Angeles County Superior Court.
9. “Defense Counsel” refers to Martin R. Fox, Megan A. Childress, and Elizabeth M. Martin of Bleau Fox A P.L.C.
10. “Effective Date” means the date on which both of the following have occurred: (i) final approval of the Settlement Agreement is granted by the Los Angeles County Superior Court, or other court of competent jurisdiction, and (ii) the Court’s Judgment approving the Settlement Agreement becomes final. “Final” means the latest of: (i) if there is an appeal of the Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court; or, (ii) if a petition for review is filed, the date of denial of the petition or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration of the time for filing or noticing any appeal of the Judgment.
11. “Fairness Hearing” means the hearing at which the Court will determine whether the settlement terms are fair, reasonable, and adequate and meet all requirements for Final Approval of the Settlement Agreement.
12. “Final Approval Order” means the order by the Court approving the settlement following the Fairness Hearing and entering final judgment.
13. “Gross Settlement Amount” means the One Million, Six Hundred Twenty-Four Thousand Dollars and Zero Cents (\$1,624,000.00) payable by Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. to fund the settlement.
14. “Individual Class Settlement Payment” means the individual distribution of the Net Settlement Amount to each Participating Class Member, as defined in Section VIII(B), below.
15. “Individual PAGA Settlement Payment” means the individual distribution of the PAGA Award to each Aggrieved Employee, as defined in Section V.6., below.
16. “Net Settlement Amount” refers to the Gross Settlement Amount minus court-approved Attorneys’ Fees and Costs, Settlement Administration costs, Service Awards, and the PAGA Award.
17. “PAGA Award” means the Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) allocated to the Labor and Workforce Development Agency (“LWDA”) and Aggrieved Employees.
18. “PAGA Period” means the period from September 1, 2019, to April 1, 2022.
19. “Participating Class Members” means all Settlement Class Members who do not timely and effectively opt out of the Settlement.

20. “Released Claims” means any and all claims during the Class Period which were or could have been raised based on the facts, conduct, and/or omissions alleged in the ~~Action~~operative complaint, including all wage and hour claims, demands, rights, liabilities, and causes of action for unpaid wages, including minimum wage payments, regular wages, overtime wages; failure to pay wages during employment; failure to pay all wages due upon separation of employment; failure to maintain and provide accurate records; meal and rest break violations; meal and rest break premiums; failure to indemnify employees for necessary expenditures incurred in discharge of duties; wage statement violations; violation of the Private Attorney General Act, civil and statutory penalties, interest, liquidated damages, attorney’s fees and costs, claims under California Labor Code sections 90.5, 201-203, 218.5, 226, 226.2, 226.7, 351, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1193.6, 1194, 1194.2, 1197, 1199, 2698-2699.5, and all applicable Industrial Welfare Commission Wage Orders, California Code of Civil Procedure section 1021.5, and claims under California Business & Professions Code sections 17200-17205. It is understood and agreed that Released Claims do not include claims for workers’ compensation, unemployment, or disability benefits of any nature, nor any claims, actions, or causes of action which may be possessed by Settlement Class Members under state or federal discrimination statutes, including, without limitation, the California Fair Employment and Housing Act, California Government Code section 12940, *et seq.*; the Unruh Civil Rights Act, California Civil Code section 51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.*; and all of their implementing regulations and interpretive guidelines.

21. “Service Award” means the Ten Thousand Dollars and Zero Cents (\$10,000.00) payable to each Plaintiff for her service to the Settlement Class as a Class Representative, for a total amount of Twenty Thousand Dollars and Zero Cents (\$20,000).

22. “Settlement Administration Costs” refers to the costs and expenses incurred by the Settlement Administrator in the performance of its tasks and duties as provided by this Agreement.

23. “Settlement Administrator” means the lower bidder of two administrators to whom the administration service for this matter has been put out to bid.

24. “Settlement Class” and “Settlement Class Members” refer to all current and former non-exempt employees who worked in California for Defendants and/or any of the Fueling Stations during the Class Period and are co-extensive with Aggrieved Employees.

25. “Settlement Fund” means the account created by the Settlement Administrator for purposes of administering this Agreement and distributing the Gross Settlement Amount.

## **II. RECITALS**

1. On November 10, 2020, Plaintiff Mitchell filed the Action on behalf of herself and all others similarly situated. The Action alleged against Defendants Pacific Investment & Management, Inc., Premier Investors Group, Inc., and Lincoln Petroleum Inc. the following causes of action: 1) failure to pay minimum wages; 2) failure to pay overtime wages; 3) failure to provide meal periods; 4) failure to provide rest periods; 5) failure to reimburse for necessary business

expenses; 6) failure to furnish accurate wage statements; 7) failure timely to pay all wages do to discharged and quitting employees; 8) unfair and unlawful business practices under the Unfair Competition Law (“UCL”), Bus & Prof. Code § 17200, *et seq.*; and 8) violation of PAGA, Lab. Code § 2698, *et seq.*

2. On June 3, 2021, the Court ordered that the scope of the putative class for discovery purposes included all employees “who worked at any one of the Defendants’ ‘Fueling Stations’ during the putative class period of November 10, 2016 to the present, which include the retail gasoline stations under the common ownership, management and/or corporate control of Messrs. Farhad Ghadooshahy and Farzan Ghadooshahy, and regardless of the legal entities whose names appear on putative class members’ wage statements for the work performed.”

3. On August 26, 2021, Plaintiff Mitchell filed a First Amended Complaint (“FAC”), adding as named parties Plaintiff Miles and Defendants Farzan Ghadooshahy and Farhad Ghadooshahy. The Action was re-filed on December 2, 2021 as the Second Amended Complaint (“SAC”) to cure defective service of the FAC.

4. The Parties agreed to mediate the claims at issue and engaged in preparatory discovery, which exchange included Defendants’ providing a significant sampling of time and payroll records, Settlement Class Members’ personnel files, and Defendants’ written policies. The discovery exchanged included relevant time and payroll records for employees of the Fueling Stations.

5. The Parties participated in a full day of mediation session with Lynn Frank, Esq., on February 3, 2022. Additional information was exchanged during the mediation. With Ms. Frank’s assistance, the Parties reached a settlement in principle, which included the material terms contained herein.

6. Neither this Settlement Agreement and Release (“the Agreement”) nor any document referred to or contemplated herein, nor any action taken to carry out the terms of the Agreement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendants of evidence of any unlawful conduct, fault, wrongdoing, or liability with respect to the Action.

7. The Parties now desire to fully, finally, and forever settle, compromise, and discharge the claims released herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and conditions set forth, the Parties agree as follows:

### **III. NON-ADMISSION OF LIABILITY**

1. By entering into this Agreement, Defendants, on behalf of themselves and all Released Parties, deny any liability for any of the claims alleged in the Action or any potential or unknown claims based on wage and hour violations during the Class Period under state or federal law.

2. Defendants specifically deny that they or any of the Released Parties have engaged in any unlawful or wrongful conduct against Plaintiffs or the Settlement Class.

3. Defendants contend further that, for purposes other than settlement, the Action is not appropriate for class treatment.

4. The Parties understand and agree that this Settlement is the result of a good faith compromise of disputed claims and allegations, and Defendants are entering into this Settlement solely to resolve disputed matters. No part of this Settlement or any conduct or written or oral statements made in connection with this Settlement, whether or not the Settlement is finally approved and/or consummated, is or may be offered as or construed to be an admission or concession of any kind by any of the Parties. In particular, but without limiting the generality of the foregoing, nothing about this Settlement shall be offered or construed as an admission that Defendants violated any of its obligations under the California Labor Code, applicable Industrial Welfare Commission Wage Orders, Business and Professions Code or Private Attorney General Act, or of liability in general, or any wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties. In addition, this Settlement shall not be offered or be admissible in evidence against any of the Parties or any of the Released Parties, except in any action or proceeding brought by or against Plaintiffs, the Settlement Class Members, or Defendants to enforce the Settlement's terms, or by Defendants in defense of any claims brought by Plaintiffs or the Settlement Class Members. The provisions of this paragraph shall become effective when this Settlement is signed by all Parties, and shall be binding on the Parties and their counsel regardless of whether the Settlement is preliminarily and/or finally approved or terminated for any reason, or rendered null and void.

### **IV. STIPULATION TO CONDITIONAL CLASS CERTIFICATION SOLELY FOR PURPOSES OF THE SETTLEMENT**

1. This Agreement is contingent upon certification of the Settlement Class by the Court pursuant to California Code of Civil Procedure Section 382. Defendants do not waive, and expressly reserve, the right to challenge the propriety of class or collective action certification, or any other representative treatment of Plaintiffs' claims, for any other purpose, should the Court deny certification of the Settlement Class.

2. The Parties stipulate to conditional and class certification for purpose of settlement only. If the Court does not grant preliminary and final approval of the Agreement, the conditional class certification shall immediately be set aside and the Parties will resume litigation as if no settlement had been reached.

3. The Parties' willingness to stipulate to conditional class certification as part of the Settlement shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in a non-settlement context in this Action, and shall have no bearing on and shall not be admissible or considered in connection with the issue of whether a class should be certified in any other lawsuit. Evidence of this stipulation and Agreement for settlement purposes only will not be deemed admissible for any other purpose in this or any other proceeding.

Defendants expressly reserve their right to oppose class certification should this Settlement be modified or reversed on appeal or otherwise not become final and effective for any reason.

## V. TERMS OF SETTLEMENT

### 1. **Gross Settlement Amount**

A. Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc., shall fund the settlement with a payment of \$1,624,000. This **Gross Settlement Amount ("GSA")** shall include all payments made to Participating Class Members and Aggrieved Employees for wages, penalties, interest, and liquidated damages, Attorneys' Fees of one-third of the GSA or \$541,333.33, reimbursement of Litigation and Costs not to exceed \$30,000, Settlement Administration Costs not to exceed \$9,600, Service Awards of \$10,000 for each Class Representative (for a total of \$20,000), and the PAGA Award of \$75,000. After these deductions from the Gross Settlement Amount, the net settlement amount will be approximately \$948,066.67. All legally required employer side payroll taxes (e.g., FICA, FUTA, etc.) shall be paid by Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc., from outside, and in addition to, the Gross Settlement Amount. Under no other circumstances shall Defendants and/or PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. be required to pay more than the Gross Settlement Amount except as provided for in this Settlement.

B. The Gross Settlement Amount is defined based on Defendants' representations that, during the Class Period, there were approximately 779 Settlement Class Members who worked approximately 58,000 pay periods during the Class Period.

## 2. Attorneys' Fees And Costs

A. Class Counsel shall request that the Court approve an award of attorneys' fees in an amount of one-third (33-1/3%) of the Gross Settlement Amount (\$541,333.33) plus all reasonable litigation costs in an amount not to exceed \$30,000, to be paid out of the Gross Settlement Amount. Defendants will not oppose this request.

B. The Court's approval of the Attorneys' Fees and Costs requested by Class Counsel is not a material term of the Agreement. If the Court does not approve the amount requested, or approves a lesser amount, the remaining terms of the Agreement shall remain in force and effect. A denial by the Court of Class Counsel's request for Attorneys' Fees and Costs shall not be construed as a basis from which to abrogate the Agreement.

## 3. Service Awards

A. Subject to Court approval, Plaintiffs will request Service Awards in an amount not to exceed \$10,000 to each Plaintiff for her service as a Class Representative, to be paid from the Gross Settlement Amount. Defendants will not oppose this request. Any such Service Award shall be made separate from, and in addition to, any payment to which Plaintiffs may otherwise be entitled as Participating Class Members. Each respective Service Award shall be allocated as 1099 income, which shall not be subject to payroll taxes and withholdings and will be reported on an IRS 1099 Form.

B. The Class Representatives will be responsible for characterizing this compensation correctly for tax purposes and for paying any taxes owing.

## 4. Settlement Administration Costs

The Parties ~~will select~~have selected Simpluris, Inc. as the ~~a~~ third-party Settlement Administrator, which will disseminate the Notice of Class Action Settlement ("Class Notice"), an initial draft of which is attached hereto as "**Exhibit A**," and to perform all tasks and duties necessary to fulfill the Agreement, including, the formatting and printing of the Class Notice and other documents to be mailed to the Settlement Class (including Spanish translations thereof), processing and maintaining the Class Data, updating mailing addresses for members of the Settlement Class before the initial mailing of the Class Notice, calculating estimated Individual Class Settlement Payments, Individual PAGA Settlement Payments, declarations regarding administration as may be required by the Court, providing weekly status reports, resolving disputed claims, issuing Individual Class Settlement Payment checks and Individual PAGA Settlement checks, tax reporting, and managing uncashed checks. ~~The administration of the Settlement will be by the administrator which provided the lower of two bids for this Settlement~~Simpluris, Inc. has agreed to cap its settlement administration costs at \$9,600.

## 5. Net Settlement Amount

After deducting from the Gross Settlement Amount ("**GSA**") the Court-approved amounts for the Service Awards of \$10,000 each (for a total of \$20,000), Attorneys' Fees of one-third of the GSA or \$541,333.33 and Litigation Costs in an amount not to exceed \$30,000, the PAGA Award of \$75,000, and Settlement Administration Costs not to exceed \$9,600, the remaining

balance, or Net Settlement Amount of approximately \$948,066.67, will be distributed to Participating Class Members *pro rata* based on individual's total workweeks as a percentage of the total number of workweeks the Settlement Class worked during the Class Period.

**6. PAGA Award**

A. The PAGA Award in the amount of \$75,000 shall be allocated as follows:

i. 75% of the PAGA Award, or Fifty-Six Thousand, Two Hundred and Fifty Dollars and Zero Cents (\$56,250.00), shall be paid to the LWDA as penalties on behalf of all Aggrieved Employees.

ii. 25% of the PAGA Award, or Eighteen Thousand, Seven Hundred Fifty Dollars and Zero Cents (\$18,750), shall be distributed on a *pro rata* basis to Settlement Class Members as Individual PAGA Settlement Payments.

iii. Individual PAGA Settlement Payments will be calculated and distributed as follows:

(a) The total number of weeks worked during the PAGA Period by all Aggrieved Employees will be referred to as "the Total PAGA Workweeks."

(b) The payment to each Aggrieved Employee will be made *pro rata* based on the number of weeks worked by the Aggrieved Employee during the PAGA Period.

(c) The amount to be paid for weeks worked by a Aggrieved Employee shall be calculated by dividing Eighteen Thousand, Seven Hundred and Fifty Dollars and Zero Cents (\$18,750) by the Total PAGA Workweeks.

iv. Defendants' payroll records for Aggrieved Employees shall be determinative for purposes of calculating the Total PAGA Workweeks and each Individual PAGA Settlement Payment, absent proof to the contrary.

B. The Parties agree that there is no statutory right for aggrieved employees to be heard in objection to the PAGA Award and there is no statutory requirement to provide aggrieved employees the option to opt out of the PAGA Award. All PAGA Settlement Payments will be paid by the Settlement Administrator, and no Aggrieved Employee can opt out of or object to the PAGA Award and allocations.

**VI. RELEASE**

**1. Parties Released**

A. "Released Parties" refers to Defendants and their former or present agents, business managers, parents, subsidiaries, successors, predecessors, affiliates, officers, directors,

employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

B. Released Parties expressly includes the following entities: PFG Guadalupe Inc.; PFG Arroyo Grande Inc.; PFG Buellton Inc.; Pacific Chevron; Wilshire Chevron; Santa Monica & 14th; Brentwood Petroleum Inc.; Culver Investment Corp.; Westwood Petroleum Inc.; Laguna Beach Oil Inc.; Main St Fuels Inc.; OC Fuels Inc.; Buena Park Oil; PFG Ontario Inc.; San Diego Oil Inc.; Park Petroleum Inc.; Chula Vista Inc.; PFG San Diego Inc.; and PFG San Ysidro Inc. (collectively "the Fueling Stations"), and their former or present agents, business managers, parents, subsidiaries, successors, predecessors, affiliates, officers, directors, employees, insurers, directors, executors, attorneys, shareholders, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans' respective current or former trustees and administrators, agents, employees, fiduciaries, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

## 2. **Claims Released By The Settlement Class ~~and/or Aggrieved Employees~~**

A. On Final Approval of the settlement and this Agreement by the Court, and except as to the right to enforce the terms and conditions of this Agreement, all Settlement Class Members who do not timely and effectively opt out of the Settlement Class shall be deemed to have fully released, settled, compromised, relinquished and discharged the Released Parties from the Released Claims for the Class Period. This release occurs only when full payment has been made by Defendants per the terms of this Settlement Agreement.

### ~~A.3.~~ **Claims Released By The Aggrieved Employees**

~~B.A.~~ On Final Approval of the settlement and this Agreement by the Court, and except as to the right to enforce the terms and conditions of this Agreement, all Aggrieved Employees (including those who timely and effectively opt out of the Settlement Class) shall be deemed to have fully released and discharged the Released Parties from any and all known and unknown claims for the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.*, that were or could have been pled based on the allegations of the operative complaint and/or the PAGA Notice letters that Plaintiffs submitted to the LWDA on September 1, 2020, December 12, 2020, and July 16, 2021, for the PAGA Period. This release occurs only when full payment has been made by Defendants per the terms of this Settlement Agreement.

### ~~3.4.~~ **Additional Claims Released By The Class Representatives**

A. In addition to the Released Claims, on the final approval of the settlement and this Agreement by the Court, the Class Representatives shall be deemed to have generally released all claims against the Released Parties. This general release of claims includes claims arising from the employment relationship with the Released Parties, or the termination thereof, including claims for discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et seq.*, the California Fair Employment and Housing

Act, Cal. Gov't Code Section 12900 *et seq.*, or any claims for violation of public policy. For the purpose of implementing a full and complete release and discharge of the Released Parties, the Class Representatives expressly acknowledges that the release in this Paragraph is intended to include in its effect all claims they did not know or suspect at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based, would materially have affected the settlement of this matter, and that the consideration given under this Agreement is also for the release of those claims and contemplates their extinguishment. In furtherance of this settlement, the Class Representatives expressly waives all rights provided by California Civil Code section 1542 that they may have against any of the Released Parties. Section 1542 states:

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

B. This general release and waiver of rights under California Civil Code Section 1542 shall include all claims based on conduct or omissions that occurred at any time for the period from November 10, 2016, through the date of the Effective Date.

C. Plaintiffs acknowledge that Plaintiffs may hereafter discover claims or facts in addition to or different from those which Plaintiffs now know or believe to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, Plaintiffs hereby waive any right, claim or cause of action that might arise as a result of such different or additional claims or facts. Plaintiffs acknowledge that Plaintiffs understand the significance and consequence of such release and such specific waiver of Section 1542.

#### **4.5. Compliance with Older Workers Benefit Protection Act**

Plaintiff Dana Miles, being 40 years of age or older, expressly acknowledges and agrees that, by entering into this Agreement, she is waiving any and all rights or claims that Plaintiff Dana Miles may have arising under the Age Discrimination in Employment Act of 1967 (29 U.S.C. Section 621 *et seq.*), as amended, that have arisen on or before the date of execution of this Agreement. Plaintiff Dana Miles further expressly acknowledges and agrees that:

A. In return for this Agreement, Plaintiff Dana Miles will receive compensation beyond that which Plaintiff was already entitled to receive before entering into this Agreement;

B. Plaintiff Dana Miles was orally advised and is again hereby advised in writing by this Agreement to consult with an attorney before signing this Agreement;

C. Plaintiff Dana Miles was given a copy of this Agreement on \_\_\_\_\_, 2022, and informed that Plaintiff has 21 days within which to consider the Agreement; and

D. Plaintiff Dana Miles was informed that she has seven days following the date of execution of the Agreement in which to revoke the Agreement. Any revocation of the

Agreement must be in writing and hand delivered to Defendants' counsel during the revocation period. Given the foregoing, this Agreement shall not become effective or enforceable any earlier than seven (7) days following the date Plaintiff Dana Miles executes this Agreement.

## **VII. NOTICE TO MEMBERS OF THE SETTLEMENT CLASS**

### **1. Class Data**

No more than fourteen (14) calendar days after the entry of the preliminary approval order, Defendants shall provide the Settlement Administrator with the Class Data in the form of a list containing the names, employee identification numbers, last known addresses, inclusive dates of active employment during the Class Period, and social security numbers for each Settlement Class Member. The Settlement Administrator will calculate the number of weeks each Settlement Class Member worked based on the Class Data provided. The Class Data is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall take all necessary precautions to maintain its confidentiality. The Settlement Administrator shall not share the Class Data with any other party or counsel for any of the Parties. The information is to be used only to carry out the Settlement Administrator's duties as specified in this Agreement.

### **2. Initial Mailing**

Within ten (10) calendar days of receipt of the Class Data from Defendants, the Settlement Administrator will send a Class Notice to each Settlement Class Member.

### **3. No Claims Forms**

No claim form is required to receive a proportionate Individual Class Settlement Payment or Individual PAGA Settlement Payment. The Settlement Administrator will calculate and mail all individual payments to each Participating Class Member and/or Aggrieved Employee.

### **4. Re-Mailing**

A. To provide the best notice practicable, any Class Notice returned to the Settlement Administrator as non-deliverable with a forwarding mailing address affixed shall be sent by First Class U.S. Mail to the address so affixed. If a Class Notice is returned as undeliverable without a forwarding address affixed thereto, the Settlement Administrator shall attempt to locate a current mailing address for the Settlement Class Member by skip trace and will mail the Class Notice to the updated address identified. If no current address can be identified, the Class Notice for that Settlement Class Member will be deemed undeliverable.

B. On the remailing of Class Notices by the Settlement Administrator to an updated mailing address, whether found through skip-tracing, provided by Class Counsel, or as provided by the Settlement Class Member (on the submission of a Change of Address form), the Settlement Administrator shall keep a record of the postmark mailing dates for such re-mailed Class Notices, and record all undelivered Class Notices.

5. Compliance with the procedures specified in the foregoing paragraphs of this Section of this Agreement shall constitute due and sufficient notice to Settlement Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, and Defendants' Counsel to provide notice of the proposed Settlement.

## **VIII. SETTLEMENT FUND AND DISTRIBUTION**

### **1. Creation Of Settlement Fund**

A. The Settlement Administrator shall establish a Settlement Fund for purposes of administering the Agreement. The Settlement Administrator shall furnish the Settlement Fund with its own Employer ID Number and calculate all settlement checks and payroll deductions and withholdings required under law based on information that will be confidentially furnished by Defendants.

B. Within thirty (30) calendar days of the Effective Date, Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. shall deposit the Gross Settlement Amount into the Settlement Fund.

### **2. Calculation Of Individual Class Settlement Payments**

A. The portion of the Settlement Fund available for Individual Class Settlement Payments to Participating Class Members shall be distributed as follows:

i. The total number of weeks worked during the Class Period by all Participating Class Members will be referred to as "the Total Workweeks."

ii. The payment to each Participating Class Member will be made *pro rata* based on the number of weeks worked by the Participating Class Member during the Class Period.

iii. The amount to be paid for weeks worked by a Participating Class Member shall be calculated by dividing the Net Settlement Amount by the Total Workweeks.

iv. Defendants' payroll records for Participating Class Members shall be determinative for purposes of calculating the Total Workweeks and each Individual Class Settlement Payment, absent proof to the contrary.

### **3. Escalator Clause**

A. This settlement was entered into based on Defendants' representation that there are 779 Settlement Class Members who worked approximately 58,000 weeks during the Class Period.

B. If the total number of workweeks for the Class Period exceeds 63,800, then the Gross Settlement Amount shall be increased proportionally based on the number of workweeks in excess of 63,800 in the amount of \$28.00 per workweek. For example, if the number of workweeks is 63,801, the Gross Settlement Amount to be paid by Defendants and PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. shall increase by \$28.00. Under no other circumstances shall Defendants and/or PFG Guadalupe Inc., PFG Arroyo Grande Inc., PFG Buellton Inc., Pacific Chevron, Wilshire Chevron, Santa Monica & 14<sup>th</sup>, Brentwood Petroleum Inc., Culver Investment Corp., Westwood Petroleum Inc., Laguna Beach Oil Inc., Main St Fuels Inc., OC Fuels Inc., Buena Park Oil, PFG Ontario Inc., San Diego Oil Inc., Park Petroleum Inc., Chula Vista Inc., PFG San Diego Inc., PFG San Ysidro Inc. be required to pay more than the Gross Settlement Amount except as provided for in this Settlement.

#### **4. Distribution To Participating Class Members and/or Aggrieved Employees**

A. Within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund, the Settlement Administrator shall distribute the Individual Class Settlement Payments and Individual PAGA Settlement Payments by check to Participating Class Members and/or Aggrieved Employees.

B. If any check remains uncashed after one hundred eighty (180) days from the date the check is issued, such check(s) shall be voided by the Settlement Administrator. The Parties agree that the Settlement Fund is non-reversionary, and 100% of the residual from uncashed or undeliverable checks shall be distributed to a *cy pres* recipient approved by the Court, with one proposed recipient for 50% nominated by Plaintiffs and one proposed recipient for 50% nominated by Defendants, subject to Court approval, without further amendment to this Agreement.

C. The Settlement Administrator shall furnish its own Employer Identification Number and calculate all Individual Class Settlement Payments and Individual PAGA Settlement Payments, including any payroll deductions, based on the confidential Class Data provided by Defendants. The Settlement Administrator will prepare all necessary tax reporting and documentation with respect to payments made pursuant to this Agreement. The Settlement Administrator will provide the requisite IRS Forms W2 and 1099 to Participating Class Members and Aggrieved Employees with all payments. The tax documents shall reflect payment for the year in which payment is made pursuant to this Agreement.

i. Allocation of individual payments to Participating Class Members shall be reported for tax purposes as follows: 20% as wages on IRS Form W-2; and 10% as civil penalties, premiums and/or waiting time penalties and 70% as interest on IRS Form 1099.

ii. For the portion of the Individual Class Settlement Payment allocated to wages, the Settlement Administrator shall be responsible for calculating and

submitting the appropriate amount of the employees' share of payroll taxes and withholdings to the appropriate state and federal tax authorities.

iii. Allocation of Individual PAGA Settlement Payments to Aggrieved Employees shall be reported for tax purposes as follows: 10% as penalties and 90% as interest on IRS Form 1099.

D. Within twenty (20) business days after the Effective Date, the Settlement Administrator shall distribute the Service Awards to the Class Representatives.

E. None of the payments made pursuant to this Agreement will be considered for purposes of determining eligibility for, vesting or participation in, calculation of, or contributions to any welfare or benefit plans, including, without limitation, all plans, subject to ERISA. The Parties agree that these payments do not represent any modification of any employee's previously-credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan, or other program or policy.

## **5. Workweek Disputes**

A. If a Settlement Class Member disputes the number of Workweeks preliminarily assigned by the Settlement Administrator, the Settlement Class Member must timely submit a valid written Workweek Dispute to the Settlement Administrator no later than thirty (30) days from the date of the mailing by the administrator.

B. The Workweek Dispute should state that the Settlement Class Member received the Class Notice and include the number of weeks the Settlement Class Member contends he or she worked during the Class Period and/or the PAGA Period. The Workweek Dispute must be supported with documents showing the number of weeks worked and state the Settlement Class Members' full name and address and the approximate dates of employment with Defendants or at one or more of the Fueling Stations in California.

C. Disputes submitted within ten (10) days prior to final approval will be resolved prior to final approval.

D. Defendants' records will be presumed accurate. If a Settlement Class Member disputes Defendants' records, he or she has the burden of proof to establish otherwise.

## **6. Attorneys' Fees And Costs**

The Settlement Administrator shall distribute to Participating Class Members and/or Aggrieved Employees their portions of the Settlement Fund owed under this Agreement within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund. Within five (5) calendar days after that, the Settlement Administrator shall distribute \$56,250 to the LWDA, meaning 75% of the PAGA penalties. Within five (5) calendar days after that, the Settlement Administrator shall distribute attorneys' fees to Class Counsel of \$541,333.33.

~~meaning one-third (33-1/3%) of the Gross Settlement Amount and reimbursement of costs to Class Counsel, in an amount not to exceed \$30,000, Settlement Administration Costs to itself in an amount not to exceed \$9,600, and Service Awards to the Class Representatives of \$10,000 each (for a total of \$20,000 in Service Awards). Within ten (10) calendar days after the deposit of the Gross Settlement Amount into the Settlement Fund, the Settlement Administrator shall distribute to Class Counsel \$541,333.33, meaning one-third (33-1/3%) of the Gross Settlement Amount, and reimbursement of costs incurred. The Settlement Administrator shall distribute the remainder of the Settlement Fund to Participating Class Members and/or Aggrieved Employees within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund.~~

**7. Settlement Administration Costs**

Within twenty (20) business days after the deposit of the Gross Settlement Amount into the Settlement Fund, the Settlement Administrator shall deduct the Court-approved sum for payment of its fee and costs for administering the Settlement pursuant to its terms.

**8. *Cy Pres* Recipient**

Because the Settlement Fund is non-reversionary, subject to Court approval, any residual funds from checks that remain uncashed or undeliverable shall be donated to the cy pres recipient(s) approved by the Court.

**IX. OBJECTIONS AND EXCLUSIONS**

**1. Exclusion From The Settlement Class**

A. Settlement Class Members who wish to exclude themselves from the Settlement Class (“opt-out”) may use the procedure set forth in the Class Notice. A request to opt-out of the Settlement Class will be deemed timely if postmarked no later than ~~thirty-sixty (3060)~~ days after the initial mailing of the Class Notice (“Opt-Out Request”).

B. The Opt-Out Request should state that the Settlement Class Member wants to be excluded from the Settlement Class and include the Settlement Class Member’s full name and address and the approximate dates of employment with Defendants or at one or more Fueling Stations in California.

C. Settlement Class Members who timely opt-out may not submit an objection to the Agreement.

D. The Parties agree there is no statutory requirement to provide Aggrieved Employees the option to opt out of the PAGA Award. All Aggrieved Employees (including those who timely and effectively opt out of the Settlement Class) will receive Individual PAGA Settlement Payments.

**2. Objections To The Settlement**

A. The Parties agree that there is no statutory right for Aggrieved Employees to be heard in objection to the PAGA Award. All Aggrieved Employees (including those who

timely and effectively opt out of the Settlement Class) will receive Individual PAGA Settlement Payments.

B. Settlement Class Members who object to the settlement and this Agreement should submit written objections using the procedures set forth in the Class Notice, postmarked no later than ~~fifty-sixty~~ (5060) calendar days after the Class Notice is mailed.

C. The objection should state that the Settlement Class Member is providing notice of his or her intent to appear at the Fairness Hearing and list each specific objection and any legal support. The objection must also include the Settlement Class Member's full name and address and the approximate dates of employment with Defendants or at one or more of Fueling Stations in California.

D. Participating Class Members may also appear at the Fairness Hearing to present any objections.

3. **Defendants' Option to Terminate Settlement.**

If, after the deadline for Settlement Class Members to exclude themselves from the Settlement and before the Fairness Hearing, fifteen percent (15%) or more of the number of Settlement Class Members submit timely and valid Opt-Out Requests from the Settlement, Defendants shall have, in their sole discretion, the option to terminate this Settlement. The Settlement Administrator must provide Defendants with the number and percentage of valid and timely Opt-Out Requests no later than twenty-one (21) calendar days prior to the Fairness Hearing. Defendants shall exercise its option to terminate, if they wish, no later than five (5) calendar days prior to the Fairness Hearing. If Defendants decide to void the Settlement, then the Settlement and conditional class certification shall be considered void, and neither the Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Should Defendants void the Settlement under this paragraph, Defendants shall be responsible for all Settlement Administration Costs incurred by the Settlement Administrator through the date that Defendants notify the Settlement Administrator that they are exercising the option to terminate the Settlement.

**X. SCHEDULE FOR PRELIMINARY AND FINAL APPROVAL**

**1. Procedures For Court Approval**

The following procedures for obtaining the Court's approval shall be implemented with respect to the Settlement, notice to the Settlement Class, and all benefits provided under this Agreement:

**A. Request for Approval**

Class Counsel will prepare a motion for preliminary approval, which Class Counsel will file with the Court.

## **B.      PAGA Claims**

Class Counsel shall submit the proposed settlement to the LWDA at the same time it is submitted to the court, pursuant to Lab. Code, § 2699 (1)(2). Within ten (10) days of entry of an Order that awards or denies PAGA penalties, Class Counsel shall submit a copy to the LWDA, pursuant to Lab. Code, § 2699 (1)(3).

## **C.      Stay of all Litigation**

As of April 13, 2022, and pending preliminary and final approval of the Settlement, the Parties agree that there will be a stay of all litigation activity not reasonably necessary for approval by the Court of this Agreement and all terms herein.

### **2.      Duties of the Parties Following Final Court Approval**

Following final approval of the settlement and this Agreement, Class Counsel will submit a mutually agreeable [proposed] Final Order and Judgment approving the Agreement, adjudicating the terms thereof to be fair, adequate, and reasonable, directing consummation of all terms and provisions, and, without affecting the finality of the Order Granting Final Approval and Judgment, allowing the Court to retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Final Approval Order and the Agreement, pursuant to C.C.P. § 664.6. The executed Final Order and Judgment shall be posted on the Settlement Administrator's website.

## **XI.    MISCELLANEOUS PROVISIONS**

### **1.      Tax Treatment And Tax Indemnification**

Defendants, Class Counsel, and Defense Counsel do not, and will not, give any tax advice in connection with the Settlement or any payments to be made pursuant to this Agreement. Participating Class Members and/or Aggrieved Employees are responsible for characterizing the Individual Class Settlement Payments and Individual PAGA Settlement Payments correctly for tax purposes and paying taxes due, if any.

### **2.      Mutual Full Cooperation**

The Class Representatives, Defendants, Class Counsel, and Defense Counsel agree to cooperate fully with each other to accomplish the terms of this Agreement, including execution of necessary documents and other such other action as may reasonably be necessary to implement the terms herein.

### **3.      Neutral Employment Reference**

If they receive any request, whether oral or written, from prospective employers or other persons about either Plaintiff, Defendants shall provide a neutral and objective employment reference. Defendants shall not refer to the Action or the Settlement.

#### **4. Parties' Authority**

The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Class Representatives, the Settlement Class, Aggrieved Employees, the LWDA, and Defendants to all terms stated herein.

#### **5. Binding Nature of the Agreement**

A. This Settlement shall bind the Parties and all Settlement Class Members, subject to the terms and conditions set forth in the Settlement and the Court's approval.

B. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. The Class Representatives represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, or encumbered, any of the Released Claims.

C. This Agreement shall be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding the mediation confidentiality provisions that otherwise might apply under federal or state law. Notwithstanding the foregoing, this Agreement may not be admitted into evidence or used in any proceeding except an action, motion or proceeding to approve, interpret, or enforce the terms of this Agreement.

D. Material amendments to this Agreement may be made only by a written instrument signed by Class Counsel, the Class Representatives, Defense Counsel, and Defendants, and such changes may only be made with Court approval. The Class Representatives and Defendants authorize their respective counsel to make any ministerial amendments or modifications to this Agreement, including formatting changes, typographic corrections, and any necessary revisions to the draft Class Notice documents attached hereto, by way of written instrument signed by Class Counsel and Defense Counsel on their respective clients' behalf. No rights under this Agreement may be waived except in writing.

#### **6. Joint Drafting of Settlement Documents**

A. Class Counsel and Defense Counsel have arrived at this Agreement through a series of informed and arm's-length negotiations, including mediation, and taking into account all relevant factors, present and potential.

B. This Agreement has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Agreement, the same shall not be construed against any of the Parties.

#### **7. Execution of the Agreement**

This Agreement may be executed in one or more counterparts and by facsimile. All executed copies of this Agreement, and photocopies thereof, shall have the same force and effect and shall be as legally binding and enforceable as the original.

8. **Continuing Jurisdiction**

The Court shall retain jurisdiction over the implementation of this Agreement and all matters arising out of, or related to, its implementation. ~~The Court shall not have jurisdiction to modify the terms of the Agreement without the consent of all Parties in writing.~~

9. **Disputes**

Any dispute arising out of or relating to this Agreement that cannot be resolved by the Parties will be submitted to Lynn Frank, Esq., for resolution, including potential further mediation. The Parties will split the mediator's costs, and all Parties will bear their own attorneys' fees and other costs incurred. Nothing in this provision shall limit Class Counsel's ability to seek any such attorneys' fees and other costs incurred as part of the Gross Settlement Amount.

*[Signatures On Next Page]*

Date: ~~September May~~ \_\_\_, 2022

By: \_\_\_\_\_  
Kentoya Mitchell  
Plaintiff and Class Representative

Date: ~~September May~~ \_\_\_, 2022

By: \_\_\_\_\_  
Dana Miles  
Plaintiff and Class Representative

Date: ~~September May~~ \_\_\_, 2022

By: \_\_\_\_\_  
Farhad Ghadooshahy

Individually and as corporate representative  
of Defendants PACIFIC INVESTMENT &  
MANAGEMENT, INC., PREMIER  
INVESTORS GROUP, INC., LINCOLN  
PETROLEUM INC., PFG GUADLUPE  
INC., PFG ARROYO GRANDE INC., PFG  
BUELLTON INC., PACIFIC CHEVRON,  
WILSHIRE CHEVRON, SANTA MONICA  
& 14TH, BRENTWOOD PETROLEUM  
INC., CULVER INVESTMENT CORP.,  
WESTWOOD PETROLEUM INC.,  
LAGUNA BEACH OIL INC., MAIN ST  
FUELS INC., OC FUELS INC., BUENA  
PARK OIL, PFG ONTARIO INC., SAN  
DIEGO OIL INC., PARK PETROLEUM  
INC., CHULA VISTA INC., PFG SAN  
DIEGO INC., PFG SAN YSIDRO INC.

Date: ~~September May~~ \_\_\_, 2022

By: \_\_\_\_\_  
Farzan Ghadooshahy

APPROVED AS TO FORM ONLY:

Date: ~~September May~~ \_\_\_, 2022

**THE KICK LAW FIRM, APC**

By: \_\_\_\_\_  
Taras Kick  
Attorneys for Plaintiffs

APPROVED AS TO FORM ONLY:

| Date: ~~May~~ September \_\_\_\_, 2022

**BLEAU FOX APLC**

By: \_\_\_\_\_  
Megan A. Childress

Attorneys for Defendants

# **EXHIBIT 3**

(N/A)