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

DARRELL COLTER, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

PROPULSION CONTROLS ENGINEERING, a
California corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 37-2020-00030682

CLASS ACTION

[Assigned for all purposes to: Hon. Keri Katz,
Dept. C-74]

**DECLARATION OF JUSTIN F.
MARQUEZ IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement, Memorandum of
Points and Authorities; and [Proposed] Order
Granting Plaintiff's Motion for Preliminary
Approval of Class Action Settlement]

PRELIMINARY APPROVAL HEARING

Date: May 20, 2022

Time: 8:30 a.m.

Dept: C-74

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1. I am admitted, in good standing, to practice as an attorney in the State of California, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Southern, Eastern, and Northern Districts of California. I am a Senior Partner at Wilshire Law Firm, PLC, counsel of record for Plaintiff Darrell Colter (“Plaintiff”). I have personal knowledge of the facts set forth in this declaration and could and would competently testify to them under oath if called as a witness. This Declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

2. This is a wage and hour class action and PAGA representative action. Plaintiff and putative class members worked in California as non-exempt employees for Defendant during the class period. Defendant provides ship repair services in the commercial, military and private yacht industries with its headquarters in San Diego, California.

3. Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not recording the actual start and end times of shifts for each workday, by automatically deducting meal periods, and by implementing a rounding policy that systematically underpaid Plaintiff and putative class members' wages. Plaintiff further alleges that Defendant failed to include all remuneration in the employees' overtime rate and meal and rest period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, unfair business practices, and civil penalties under PAGA.

4. On September 1, 2020, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab.

Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab. Code § 2802); and (8) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). On November 19, 2020, Plaintiff filed a First Amended Class Action Complaint. On February 22, 2022, Plaintiff filed a Second Amended Class and Representative Action Complaint adding a claim for civil penalties under PAGA.

DISCOVERY AND INVESTIGATION

5. Following the filing of the Complaint, the Parties informally exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for the class members. Defendant also provided documents of their wage and hour policies and practices during the class period, and information regarding the total number of current and former employees.

6. After reviewing documents regarding Defendant's wage and hour policies and practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation

SETTLEMENT NEGOTIATIONS

7. On October 21, 2021, the Parties participated in private mediation with experienced class action mediator, Steve J. Serratore, Esq. The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached.

1 8. After extensive negotiations and discussions regarding the strengths and
2 weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a
3 resolution, the material terms of which are encompassed within the Settlement Agreement.
4 Attached as **Exhibit 1** is a true and correct copy of the Stipulation of Settlement

5 9. The settlement includes \$50,000.00 allocated to Plaintiff's claims under PAGA,
6 with 75% (\$37,500.00) being paid to the LWDA and 25% (\$12,500.00) being paid to the Aggrieved
7 Employees (Settlement, § XVI.) Class Counsel submitted the proposed settlement to the LWDA
8 before filing this Motion for Preliminary Approval.

9 10. The Settlement provides that Defendant will not oppose a fee application of up to
10 33 1/3% (\$458,333.33) of the Settlement Amount, plus actual out-of-pocket Litigation costs not to
11 exceed \$25,000.00. (Settlement, § XIII.)

12 11. I requested numerous bids from experienced class action settlement administrators
13 to handle the responsibilities of the Settlement Administrator under this settlement. The Parties
14 accepted the bid of Phoenix Class Action Administration Solutions. In its bid, Phoenix Class
15 Action Administration Solutions agreed to cap its costs at \$10,175.00 if there are 725 class
16 members or less. The bid also provides that class notice will be provided in English and Spanish.
17 A true and correct copy of the bid is attached hereto as **Exhibit 2**.

18 12. Plaintiff does not have any interest, financial or otherwise, in the proposed *cy pres*
19 recipient, Legal Aid at Work, or the third-party administrator, Phoenix Settlement Administrators.

20 13. No one at Wilshire Law Firm, PLC (meaning the law firm itself and anyone
21 employed at the law firm) has any interest, financial or otherwise, in the proposed *cy pres* recipient,
22 Legal Aid at Work, or the third-party administrator, Phoenix Class Action Administration
23 Solutions.

24 14. Wilshire Law Firm, PLC has no fee-splitting agreement with any other counsel in
25 this case.

26 THE PROPOSED SETTLEMENT IS FAIR AND REASONABLE

27 15. Class Counsel has conducted a thorough investigation into the facts of this case.
28 Based on the foregoing discovery and their own independent investigation and evaluation, Class

1 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
2 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
3 of significant delay, the defenses that could be asserted by Defendant both to certification and on
4 the merits, trial risk, and appellate risk.

5 16. Based on an analysis of the facts and legal contentions in this case, documents and
6 information from Defendant, I evaluated Defendant's maximum exposure. I took into account the
7 risk of not having the claims certified and the risk of not prevailing at trial, even if the claims are
8 certified. After using the data Defendant provided, including a random sampling of timekeeping
9 and payroll records, as well as class member demographics (i.e., the number of class members,
10 workweeks, and average total compensation of the class), with the assistance of a statistics expert,
11 I created a damages model to evaluate the realistic range of potential recovery for the class. The
12 damages model is based on the following benchmarks:

13 Total Class Members: 711

14 Terminated Class Members during 3-year statute: 407

15 Total Workweeks: 52,689

16 PAGA Pay Periods: 16,044

17 Avg. Hourly Rate: \$23.82

18 Class period: September 1, 2016 through January 19, 2022

19 17. Plaintiff alleges that Defendant failed to pay for all hours worked, including
20 minimum wages, straight time wages, and overtime wages, due to Defendant implementing a
21 rounding policy that systematically underpaid Plaintiff and putative class members, and
22 automatically deducting 30-minute meal periods. My expert analyzed Defendant's timekeeping
23 and payroll records and found that Defendant's rounding practices resulted in, 65.9% of employee
24 shifts favoring the employer, and only 26.6% of shifts favoring employees, resulting in an average
25 of 2.5 minutes that were underpaid per shift to class members. In analyzing the records, my expert
26 estimated that Defendant's rounding practice resulted in a net underpayment of approximately
27 8,618 hours to the class members, which is equivalent to a maximum liability of \$392,146,
28 including interest. I discounted this figure by 30% to account for the difficulty of prevailing on a

1 motion for class certification and a trial on the merits, yielding a realistic damage estimate of
2 **\$274,502.20.**¹

3 18. With respect to the meal period claim, Plaintiff alleges that Defendant required him
4 and similarly situated class members to work in lieu of taking meal periods, and Defendant lacked
5 legally compliant policies and practices providing meal periods for the entirety of the class period.
6 My expert analyzed Defendant's timekeeping records and found that approximately 76% of all
7 meal breaks had alleged violations of short, missed, or no meal periods. Potential liability for the
8 meal period claim, factoring in the premiums issued to off-set the remaining premiums owed,
9 which includes shifts 5-6 hours long, shifts over six hours long, shifts over ten hours long, and
10 shifts over 12 hours long is \$4,979,021, including interest; however, I discounted this figure by
11 80% to account for the difficulty of certifying and proving meal period claims, especially in light
12 of the federal enclave exemption, and to account for the possibility of class members voluntarily
13 choosing to forego a meal period, yielding a realistic damage estimate of **\$995,804.20**.

14 19. With respect to the rest period claim, Plaintiff alleges that Defendant required him
15 and similarly situated class members to work in lieu of taking rest periods, and Defendant lacked
16 legally compliant policies and practices authorizing and permitting employees to take
17 uninterrupted, off-duty rest periods for the entirety of the class period. Assuming a 50% violation
18 rate for the entirety of the class period based on Plaintiff's and other class members' experience
19 working for Defendant, Defendant's potential liability for the rest period claim is \$3,267,627;
20 however, I discounted this figure by 80% to account for the difficulty of certifying and proving
21 rest period claims, particularly because rest periods do not have to be recorded, and to account for
22 the possibility of class members voluntarily choosing to forego a rest period, yielding a realistic
23 damage estimate of **\$653,525.40**.

24 20. With respect to the claim for unreimbursed business expenses, Plaintiff alleges that
25 _____

26 ¹ Discounts for risk at certification and trial are reasonable because the Judicial Council of
27 California found that only 21.4% of all class actions were certified either as part of a settlement
28 *or* as part of a contested certification motion. *See* Findings of the Study of California Class
Action Litigation, 2000-2006, available at [http:// www.courts.ca.gov/documents/class-action-lit-
study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf).

1 Defendant required him and similarly situated class members to purchase work-related tools,
2 protective gear, work attire, and required the use of personal cell phones during working hours.
3 My expert estimated the potential liability for this claim to be worth \$323,075.67; however, I
4 discounted this figure by 80% to account for the difficulty of certifying and proving this claim,
5 yielding a realistic damage estimate of **\$64,615.13**.

6 21. In sum, Plaintiff and the class member's maximum recovery for the unpaid wages
7 and expenses based on the alleged failure to pay for all hours worked (minimum, straight time, and
8 overtime wages), failure to provide premiums for all meal and rest period violations, and failure to
9 provide reimbursements for all business-related expenses is **\$8,961,869.67**, but, **after factoring in**
10 **the risk and uncertainty of prevailing at certification and trial, Plaintiff's realistic estimated**
11 **recovery for the non-penalty claims is \$1,988,446.93.**

12 22. With respect to Plaintiff's derivative claims for statutory and civil penalties,
13 Plaintiff estimated that Defendant's realistic potential liability is \$5,303,459. While Defendant's
14 maximum potential liability for waiting time penalties is \$2,541,109 based on approximately 407
15 terminated class members during the 3-year statute, \$1,157,950.00 for inaccurate wage statements
16 based on approximately 422 class members who worked 16,044 pay periods within the 1-year
17 statute, and \$1,604,400.00 for PAGA violations based on the Court assessing a \$100 penalty for
18 initial violations for all 16,044 pay periods within the 1-year statute, I believe that it would be
19 unrealistic to expect the Court to award the full \$5,303,459.00 in penalties given Defendant's
20 defenses, the contested nature of Plaintiff's claims, and the discretionary nature of penalties.
21 Considering that the underlying claims are realistically estimated to be \$1,988,446.93, such a
22 disproportionate award would also raise due process concerns. Weighing these factors, and
23 applying a discount to account for the risk and uncertainty of prevailing at trial, I arrived at
24 **\$530,346** for statutory and civil penalties.

25 23. Using these estimated figures, Plaintiff predicted that the realistic maximum
26 recovery for all claims, including penalties, would be **\$2,518,792.93**. This means that the
27 **\$1,375,000.00** settlement figure represents approximately 54.6% of Plaintiff's assessment of
28 **the realistic maximum recovery (\$1,137,000/ \$2,518,792.93 = 54.6%)** Considering the risk and

1 uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class.
2 Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief
3 and will avoid the risk of an unfavorable judgment.

4 24. While Plaintiff is confident in the merits of his claims, a legitimate controversy
5 exists as to each cause of action. Some of the work performed by Plaintiff and the putative class
6 members were completed on federal enclaves, which potentially gives Defendant a strong federal
7 enclave doctrine defense. Plaintiff also recognizes that proving the amount of wages due to each
8 Class Member would be an expensive, time-consuming, and uncertain proposition.

9 25. This settlement avoids the risks and the accompanying expense of further litigation.
10 Although the Parties had engaged in a significant amount of investigation, informal discovery and
11 class-wide data analysis, the Parties had not yet completed formal written discovery. Plaintiff
12 intended to depose corporate officers and managers of Defendant. Moreover, preparation for class
13 certification and a trial remained for the Parties as well as the prospect of appeals in the wake of a
14 disputed class certification ruling for Plaintiff and/or adverse summary judgment ruling. Had the
15 Court certified any claims, Defendant could move to decertify the claims. As a result, the Parties
16 would incur considerably more attorneys' fees and costs through trial.

17 26. The Net Settlement Amount available for Class Member settlement payments is
18 estimated to be \$816,667.67, for a class of 711 persons.² **As a result, each Settlement Class**
19 **Member is eligible to receive an average net benefit of approximately \$1,148.62.**

20 27. The proposed settlement of \$1,375,000.00 therefore represents a substantial
21 recovery when compared to Plaintiff's reasonably forecasted recovery. When considering the risks
22 of litigation, the uncertainties involved in achieving class certification, the burdens of proof
23 necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the
24 settlement amount of \$1,375,000.00 is within the "ballpark" of reasonableness, and preliminary
25 _____

26 ² The Net Settlement Amount is: \$1,375,000.00 minus \$458,333.33 for Class Counsel's
27 attorneys' fees, minus approximately \$25,000.00 for Class Counsel's litigation expenses, minus
28 approximately \$15,000.00 in administration costs, minus \$37,500.00 for the PAGA portion sent
to the LWDA, minus \$12,500.00 for payments to the Aggrieved Employees on a *pro rata basis*,
and minus \$10,000.00 for the class representative service award.

1 settlement approval is appropriate.

2 ENHANCEMENT AWARD FOR PLAINTIFF IS REASONABLE

3 28. Class Counsel represent that Plaintiff devoted a great deal of time and work assisting
4 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
5 mediation, and was frequently in contact with Class Counsel during the mediation. Plaintiff's
6 requested enhancement award is reasonable particularly in light of the substantial benefits Plaintiff
7 generated for all class members.

8 29. Throughout this litigation, Plaintiff, who is a former employee of Defendant, has
9 cooperated immensely with my office and has taken many actions to protect the interests of the
10 class. Plaintiff provided valuable information regarding unpaid overtime, meal period, and rest
11 period claims. Plaintiff also informed my office of developments and information relevant to this
12 action, participated in decisions concerning this action, made himself available to answer questions
13 during the mediation, and provided my office with the names and contact information of potential
14 witnesses in this action. Before we filed this case, Plaintiff provided my office with several
15 documents, including policy documents, and communications from Defendant regarding the claims
16 alleged in this action. The information and documentation provided by Plaintiff was instrumental
17 in establishing the wage and hour violations alleged in this action, and the recovery provided for
18 in the Settlement Agreement would have been impossible to obtain without Plaintiff's
19 participation.

20 30. At the same time, Plaintiff faced many risks in adding himself as the class
21 representative in this matter. Plaintiff faced actual risks with his future employment, as putting
22 himself on public record in an employment lawsuit could also very well affect his likelihood for
23 future employment. Furthermore, as part of this settlement, Plaintiff is executing a general release
24 of all claims against Defendant.

25 31. In turn, class members will now have the opportunity to participate in a settlement,
26 reimbursing them for alleged wage violations they may have never known about on their own or
27 been willing to pursue on their own. If these class members would have each tried to pursue their
28 legal remedies on their own, that would have resulted in each having to expend a significant amount

1 of their own monetary resources and time, which were obviated by Plaintiff putting himself on the
2 line on behalf of these other class members.

3 32. In the final analysis, this class action would not have been possible without the aid
4 of Plaintiff, who put his own time and effort into this litigation, sacrificed the value of his own
5 individual claims, and placed himself at risk for the sake of the class members. The requested
6 enhancement award for Plaintiff for his service as the class representative and for his general
7 release of all individual claims is a relatively small amount of money when the time and effort put
8 into the litigation are considered and in comparison to enhancements granted in other class actions.
9 The requested incentive award is therefore reasonable to compensate Plaintiff for his active
10 participation in this lawsuit. Indeed, in *Karl Adams, III, et al. v. MarketStar Corporation, et al.*,
11 No. 2:14-cv-02509-TLN-DB, a wage and hour class action alleging that class members were
12 misclassified as exempt outside salespersons, I was co-lead Class Counsel and helped negotiate a
13 \$2.5 million class action settlement for 339 class members, and the court approved a \$25,000.00
14 class representative incentive award for each named plaintiff.

15 THE REQUEST FOR ATTORNEYS' FEES AND COSTS IS REASONABLE

16 33. The Settlement provides for attorney's fees payable to Class Counsel in an amount
17 up to one-third (33 1/3%) of the Settlement Amount, for a maximum fees award of \$458,333.33,
18 plus actual costs and expenses not to exceed \$25,000.00. The proposed award of attorneys' fees
19 to Class Counsel in this case can be justified under either method – lodestar or percentage recovery.
20 Class Counsel, however, intend to base the proposed award of fees, costs and expenses on the
21 percentage method as many of the entries in the time records will have to be redacted to preserve
22 attorney-client and attorney work product privileges.

23 34. I am informed and believe that the fee and costs provision is reasonable. The fee
24 percentage requested is less than that charged by my office for most employment cases. My office
25 invested significant time and resources into the case, with payment deferred to the end of the case,
26 and then, of course, contingent on the outcome.

27 35. It is further estimated that my office will need to expend at least another 50 to 100
28 hours to monitor the process leading up to the final approval and payments made to the class. My

1 office also bears the risk of taking whatever actions are necessary if Defendant fails to pay.

2 36. The risk to my office has been very significant, particularly if we would not be
3 successful in pursuing this class action. In that case, we would have been left with no compensation
4 for all the time taken in litigating this case. Indeed, I have taken on a number of class action cases
5 that have resulted in thousands of attorney hours being expended and ultimately having
6 certification denied or the defendant company going bankrupt. The contingent risk in these types
7 of cases is very real and they do occur regularly. Furthermore, we were precluded from focusing
8 on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain.

9 37. Because most individuals cannot afford to pay for representation in litigation on an
10 hourly basis, Wilshire Law Firm, PLC represents virtually all of its employment law clients on a
11 contingency fee basis. Pursuant to this arrangement, we are not compensated for our time unless
12 we prevail at trial or successfully settle our clients' cases. Because Wilshire Law Firm, PLC is
13 taking the risk that we will not be reimbursed for our time unless our client settles or wins his or
14 her case, we cannot afford to represent an individual employee on a contingency basis if, at the
15 end of our representation, all we are to receive is our regular hourly rate for services. It is essential
16 that we recover more than our regular hourly rate when we win if we are to remain in practice so
17 as to be able to continue representing other individuals in civil rights employment disputes.

18 38. As of the drafting of Plaintiff's Motion for Preliminary Approval of Class Action
19 Settlement, my office has incurred around \$16,449.89 in expenses litigating this action, and we
20 anticipate accruing additional costs up to Final Approval of the Settlement. These expenses were
21 reasonably necessary to the litigation and were actually incurred by my office. They should be
22 reimbursed in full, up to the maximum amount allowed in the Settlement Agreement.

23 MY EXPERIENCE AND QUALIFICATIONS

24 39. Wilshire Law Firm, PLC was selected by Best Lawyers and U.S. News & World
25 Report as one of the nation's Best Law Firms in 2022 and is comprised of over 50 attorneys and
26 over 250 employees. Wilshire Law Firm, PLC is actively and continuously practicing in
27 employment litigation, representing employees in both individual and class actions in both state
28 and federal courts throughout California.

1 40. Wilshire Law Firm, PLC is qualified to handle this litigation because its attorneys
2 are experienced in litigating Labor Code violations in both individual, class action, and
3 representative action cases. Wilshire Law Firm, PLC has handled, and is currently handling,
4 numerous wage and hour class action lawsuits, as well as class actions involving consumer rights
5 and data privacy litigation.

6 41. I graduated from the University of California, Los Angeles's College Honors
7 Program in 2004 with Bachelor of Arts degrees in History and Japanese, *magna cum laude* and *Phi*
8 *Beta Kappa*. As an undergraduate, I also received a scholarship to study abroad for one year at
9 Tokyo University in Tokyo, Japan. I received my Juris Doctor from Notre Dame Law School in
10 2008.

11 42. My practice is focused on advocating for the rights of consumers and employees in
12 class action litigation and appellate litigation. I am currently the primary attorney in charge of
13 litigating several class action cases in state and federal courts across the United States.

14 43. I have received numerous awards for my legal work. From 2017 to 2020, Super
15 Lawyers selected me as a "Southern California Rising Star," and in 2022 I was selected as a
16 "Southern California Super Lawyer." In 2016 and 2017, the National Trial Lawyers selected me
17 as a "Top 40 Under 40" attorney. I am also rated 10.0 ("Superb") by Avvo.com.

18 44. I am on the California Employment Lawyers Association (CELA)'s Wage and Hour
19 Committee and Mentor Committee, and I was selected to speak at CELA's 2019 Advanced Wage
20 & Hour Seminar on the topic of manageability of class actions. Since 2013, I have actively
21 mentored young attorneys through CELA's mentorship program.

22 45. I am also an active member of the Consumer Attorneys of California (CAOC). In
23 2020, I was selected for a position on CAOC's Board of Directors. I am also a member of CAOC's
24 Diversity Committee, and I help assist the CAOC in defeating bills that harm employees. Indeed,
25 I recently helped assist Jacqueline Serna, Esq., Legislative Counsel for CAOC, in defeating AB
26 443, which proposed legislation that sought to limit the enforceability of California Labor Code §
27 226.

28 46. As the attorney responsible for day-to-day management of this matter at the

1 Wilshire Law Firm, PLC, I have over eleven years of experience with litigating wage and hour
2 class actions. Over the last ten years, I have managed and assisted with the litigation and settlement
3 of several wage and hour class actions. In those class actions, I performed similar tasks as those
4 performed in the course of prosecuting this action. My litigation experience includes:

- 5 a. I served as lead or co-lead in negotiating class action settlements worth over \$10
6 million in gross recovery to class members for each year during 2020 and 2021.
- 7 b. To my knowledge, I am the only attorney to appear on each of the following *Top*
8 *Verdict* lists for 2018 in California: Top 20 Civil Rights Violation Verdicts, Top 20
9 Labor & Employment Settlements, and Top 50 Class Action Settlements.
- 10 c. As lead counsel, on April 29, 2021, I prevailed against CVS Pharmacy, Inc. by
11 winning class certification on behalf of hundreds of thousands of consumers for
12 misleading advertising claims in *Joseph Mier v. CVS Pharmacy, Inc.*, U.S. Dist. Ct.
13 C.D. Cal. no. SA CV 20-1979-DOC-(ADSx).
- 14 d. As lead counsel, I prevailed against Bank of America by: winning class certification
15 on behalf of thousands of employees for California Labor Code violations; defeating
16 appellate review of the court's order certifying the class; defeating summary
17 judgment; and defeating a motion to dismiss. (*Frausto v. Bank of America, N.A.*
18 (N.D. Cal. 2019) 334 F.R.D. 192, 2020 WL 1290302 (9th Cir. Feb. 27, 2020), 2019
19 WL 5626640 (N.D. Cal. Oct. 31, 2019), 2018 W.L. 3659251 (N.D. Cal. Aug. 2,
20 2018).). The decision certifying the class in *Frausto* is also discussed in *Class*
21 *Certification Under Fed. R. Civ. P. 23 in Action by Information Technology or Call*
22 *Center Employees for Violation of State Law Wage and Hour Rules*, 35 A.L.R. Fed.
23 3d Art. 8.
- 24 e. I was the primary author of the class certification and expert briefs in *ABM*
25 *Industries Overtime Cases* (2017) 19 Cal.App.5th 277, a wage and hour class action
26 for over 40,000 class members for off-the-clock, meal period, split shift, and
27 reimbursement claims. *ABM Industries Overtime Cases* is the first published
28 California appellate authority to hold that an employer's "auto-deduct policy for

meal breaks in light of the recordkeeping requirements for California employers is also an issue amenable to classwide resolution.” (*Id.* at p. 310.)³ Notably, the Court of Appeal also held that expert analysis of timekeeping records can also support the predominance requirement for class certification. (*Id.* at p. 310-311.) In 2021, the case settled for \$140 million, making it one of the largest ever wage and hour class action settlements for hourly-paid employees in California.

f. I briefed, argued, and won *Yocupicio v. PAE Group, LLC* (9th Cir. 2015) 795 F.3d 1057. The Ninth Circuit ruled in my client’s favor and held that non-class claims under California’s Private Attorney Generals Act (“PAGA”) cannot be used to calculate the amount in controversy under the Class Action Fairness Act (“CAFA”). This case is cited in several leading treatises such as *Wright & Miller’s Federal Practice & Procedure*, and *Newberg on Class Actions*. In October 2016, the U.S. Supreme Court denied review of a case that primarily concerned *Yocupicio*. That effort was led by Theodore J. Boutrous, who brought the cert petition, with amicus support from a brief authored by Andrew J. Pincus.⁴ Considering that leading Supreme Court practitioners from the class action defense bar were very motivated in undermining *Yocupicio* case, but failed, this demonstrates the national importance of the *Yocupicio* decision.

g. On December 13, 2018, the United States District Court granted final approval of the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 in which I served as lead counsel. In doing so, the Court found: “Class Counsel’s declarations show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

h. *Gasio v. Target Corp.* (C.D. Cal. Sep. 12, 2014) 2014 U.S. Dist. LEXIS 129852, a

³ As a California district court observed before the *ABM Industries Overtime* decision, “[t]he case law regarding certification of auto-deduct classes is mixed.” (*Wilson v. TE Connectivity Networks, Inc.* (N.D. Cal. Feb. 9, 2017) No. 14-CV-04872-EDL, 2017 WL 1758048, *7.)

⁴ <http://www.chamberlitigation.com/cases/abm-industries-inc-v-castro>.

1 reported decision permitting class-wide discovery even though the employer has a
2 lawful policy because “[t]he fact that a company has a policy of not violating the
3 law does not mean that the employees follow it, which is the issue here.” The court
4 also ordered defendant to pay for the cost of *Belaire-West* notice.

- 5 i. In 2013, I represented a whistleblower that reported that his former employer was
6 defrauding the State of California with the help of bribes to public employees. The
7 case, a false claims (*qui tam*) action, resulted in the arrest and criminal prosecution
8 of State of California employees by the California Attorney General’s Office.
- 9 j. In 2013, I was part of a team of attorneys that obtained conditional certification for
10 over 2,000,000 class members in a federal labor law case for misclassification of
11 independent contractors that did crowdsourced work on the Internet, *Otey v.*
12 *CrowdFlower, Inc.*, N.D. Cal. Case No. 12-cv-05524-JST (MEJ), resulting in the
13 following pro-plaintiff reported decisions:

- 14 1) 2013 U.S. Dist. LEXIS 151846 (N.D. Cal. Oct. 22, 2013) (holding
15 that an unaccepted Rule 68 offer doesn’t moot plaintiff’s claims, and
16 granting plaintiff’s motion to strike defendant’s affirmative defenses
17 based on *Twombly/Iqbal*).
- 18 2) 2013 U.S. Dist. LEXIS 122007 (N.D. Cal. Aug. 27, 2013) (order
19 granting conditional collective certification).
- 20 3) 2013 U.S. Dist. LEXIS 95687 (N.D. Cal. July 8, 2013) (affirming the
21 magistrate judge’s discovery ruling which held that “evidence of
22 other sources of income is irrelevant to the question of whether a
23 plaintiff is an employee within the meaning of the FLSA”).
- 24 4) 2013 U.S. Dist. LEXIS 91771 (N.D. Cal. June 20, 2013) (granting
25 broad discovery because “an FLSA plaintiff is entitled to discovery
26 from locations where he never worked if he can provide some
27 evidence to indicate company-wide violations”).

- 28 j. From 2012 to 2013, I was part of a team of attorneys that obtained class certification

1 for over 60,000 class members for off-the-clock claims, *Linares v. Securitas*
2 *Security Services USA, Inc.*, Los Angeles Superior Court No. BC416555. We also
3 successfully opposed subsequent appeals to the California Court of Appeal and
4 California Supreme Court.

5 47. Benjamin H. Haber is a fifth-year Associate Attorney at Wilshire Law Firm, PLC.
6 He was admitted to practice law in the State of California and the Central, Southern, Eastern, and
7 Northern Districts of California. He graduated from the University of California, Los Angeles,
8 with a Bachelor of Arts in Political Science, and received his Juris Doctor from the University of
9 California, Hastings College of the Law in 2016. During law school, he was a member of the
10 executive board for the Hastings Law Journal and a student mediator at the San Francisco Superior
11 Court, Small Claims Division. Since graduating law school, he has focused his legal work
12 primarily on wage and hour class action litigation. His current contingent billing rate for this case
13 is \$600 per hour, which is consistent with his level of experience in the wage and hour arena.

14 48. Daniel J. Kramer is a fifth-year Associate Attorney at Wilshire Law Firm, PLC. He
15 was admitted to practice law in the State of California and the Central, Eastern, and Northern
16 Districts of California. He graduated from Stanford University with a Bachelor of Arts in History
17 and Political Science, and received his Juris Doctor from Loyola Law School, Los Angeles in 2016.
18 During law school, he was a research editor for the Loyola of Los Angeles International and
19 Comparative Law Review. Before joining Wilshire Law Firm, he practiced briefly at a firm that
20 focused on municipal law and code enforcement and then moved to a respected plaintiff-side firm
21 to practice wage and hour class action litigation. He has several years of work experience litigating
22 wage and hour class actions. His current contingent billing rate for this case is \$550 per hour,
23 which is consistent with his level of experience.

24 49. Ronghua Guan was a fourth-year Associate Attorney at Wilshire Law Firm. She is
25 admitted to practice in the States of California, Missouri, and Texas and in the United States District
26 Courts for the Eastern District of Missouri and the Central District of California. Ronghua's most
27 recent hourly rate was \$450. She received her Juris Doctor from Washington University in St. Louis
28 in 2018 where she earned a Dean's Fellowship Award, was on the Dean's List, and received the

1 honor of Order of Barrister upon graduation. She was the Executive Articles Editor of the
2 Washington University Global Studies Law Review and competed in the Vis International
3 Arbitration Moot. Before joining Wilshire Law Firm, she practiced in a top tier insurance defense
4 law firm in St. Louis, Missouri for two and a half years. She successfully obtained motions to dismiss
5 and motions for summary judgment in employment discrimination and retaliation, legal malpractice,
6 and business litigation cases on behalf of her clients while practicing in Missouri. She also
7 successfully opposed many pretrial motions. She has almost three years of experience in
8 employment cases including wage-and-hour class action cases.

9 50. My current contingent billing rate of \$850 per hour is consistent with my practice
10 area, lead appellate experience in the Ninth Circuit Court of Appeals, numerous awards received,
11 legal market and accepted hourly rates:

12 a. In the December 8, 2008 article “Billable Hours Aren’t the Only Game in Town
13 Anymore,” *NATIONAL LAW JOURNAL*, the following hourly billing rates were
14 reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of
15 wage-and-hour class actions that I opposed when litigating wage-and-hour class
16 actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd
17 Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435,
18 8th Year - \$455. I am an 12th year attorney and Senior Partner, with most of my
19 experience in class action litigation as a primary practice area. Having successfully
20 briefed and argued a published appeal in the Ninth Circuit Court of Appeals
21 involving CAFA and PAGA, having experience certifying large class actions
22 (including *ABM Industries Overtime Cases*, which was decided on appeal), and
23 having received numerous awards for my legal work, my hourly rate should be
24 adjusted upward.

25 b. On September 9, 2021, the Hon. Peter Wilson of the Orange County Superior Court
26 approved my \$800 hourly rate when he granted final approval of the class action
27 settlement in *Ricardo Campos Hernandez v. Adams Iron Co., Inc.*, No. 30-2019-
28 01066522-CU-OE-CXC.

- 1 c. On August 6, 2021, the Hon. Stanley Blumenfeld, Jr. of the United States District
2 Court granted final approval of the \$1,600,000 class action settlement in *Carlos*
3 *Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-
4 SB-DFM, 2021 WL 3673845 in which I served as lead counsel. In doing so, the
5 Court approved my then \$750 hourly rate after finding it was “reasonable, given the
6 qualifications of the attorneys who worked on this matter.” (*Id.* at p. *3.)
- 7 d. On January 19, 2021, the Hon. Elihu M. Berle of the Los Angeles County Superior
8 Court approved my \$750 hourly rate when he granted final approval of the class
9 action settlement in *Faye Zhang v. Richemont North America, Inc.*, No.
10 19STCV32396.
- 11 e. On December 13, 2018, the United States District Court granted final approval of
12 the \$2,500,000 class action settlement in *Mark Brulee, et al. v. DAL Global Services,*
13 *LLC, supra*, 2018 WL 6616659 in which I served as lead counsel. In doing so, the
14 Court approved my then \$600 hourly rate and found: “Class Counsel’s declarations
15 show that the attorneys are experienced and successful litigators.” (*Id.* at p. *10.)

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

18 Executed on April 28, 2022, at Los Angeles, California.

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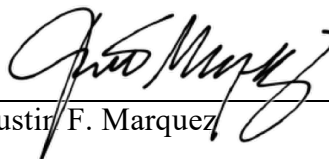

Justin F. Marquez

Exhibit 1

Justin F. Marquez, Esq. (SBN 262417)
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 Benjamin H. Haber, Esq. (SBN 315664)
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 Facsimile: (619) 236-9669

Attorneys for Defendant

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

DARRELL COLTER, individually, and on
 behalf of all others similarly situated,

Plaintiff,

v.

PROPULSION CONTROLS ENGINEERING, a
 California corporation, and DOES 1 through 10,
 inclusive,

Defendants.

Case No.: 37-2020-00030682

[Hon. Keri Katz]

STIPULATION OF SETTLEMENT

Complaint Filed: September 1, 2020
 Trial Date: N/A
 Department: 74

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Litigation shall be
3 effectuated upon and subject to the following terms and conditions.

4 This Stipulation of Settlement is made by and between the Named Plaintiff, DARRELL
5 COLTER ("Plaintiff"), on his own behalf and on behalf of all members of the Settlement Class,
6 as defined below, and Defendant Propulsion Controls Engineering, LLC (previously Propulsion
7 Controls Engineering, Inc.) ("Defendant," and together with Plaintiff, the "Parties"), in the
8 lawsuit entitled *Colter v. Propulsion Controls Engineering* filed in San Diego Superior Court,
9 Case No. 37-2020-00030682. This Stipulation of Settlement resolves all claims that were
10 asserted or could have been asserted against Defendant pertaining to the claims in the Litigation,
11 in consideration for the Releases set forth below and other terms herein.

12 **I. DEFINITIONS**

13 **A. Administrative Costs.** All administrative costs of settlement, including cost of
14 notice to the Settlement Class, settlement administration, and any fees and costs incurred or charged
15 by the Settlement Administrator in connection with the execution of its duties under this Stipulation
16 of Settlement.

17 **B. Agreement or Settlement Agreement.** The terms "Agreement" or "Settlement
18 Agreement" are used synonymously herein to mean this Stipulation of Settlement.

19 **C. Class Counsel.** The term "Class Counsel" as used herein means: WILSHIRE LAW
20 FIRM, PLC and all the lawyers of the firm acting on behalf of Named Plaintiff and the Settlement
21 Class. The term Class Counsel shall be used synonymously with the term Plaintiff's Counsel.

22 **D. Court.** The term "Court" as used herein means the Superior Court of the State of
23 California for the County of San Diego.

24 **E. Final.** The term "Final" means: (a) the 65th calendar day after a signed order
25 approving this Agreement has been filed provided no motion to intervene or motion to vacate the
26 judgment, appeal, writ or other appellate proceeding has been filed; or (b) the seventh (7th) calendar
27 day after any motion to intervene or motion to vacate the judgment, appeal, writ, or other appellate
28 proceeding opposing the Agreement has been finally dismissed with no material change to the terms

1 of this Agreement and there is no right to pursue further remedies or relief, whichever is later.

2 **F. Date of Final Approval.** The terms “Date of Final Approval” or “Final Approval
3 Order” as used herein mean the final formal judgment entered by the Court at the Final Fairness and
4 Approval Hearing in accordance with the terms herein, approving this Agreement.

5 **G. Defendant.** The term “Defendant” as used herein means Propulsion Controls
6 Engineering, LLC (previously Propulsion Controls Engineering, Inc.).

7 **H. Employer Taxes.** Employer-funded taxes and contributions imposed on the wage
8 portions of the Settlement Payment under the Federal Insurance Contributions Act, the Federal
9 Unemployment Tax Act, and any similar state taxes and contributions required of employers, such
10 as for unemployment insurance.

11 **I. Litigation.** The term “Litigation” as used herein means the action entitled filed in
12 San Diego County Superior Court, Case No. 37-2020-00030682.

13 **J. Named Plaintiff or Class Representative.** The term “Named Plaintiff” or “Class
14 Representative” as used herein means Darrell Colter.

15 **K. Net Settlement Fund or Net Settlement Amount.** The term “Net Settlement
16 Amount” or “Net Settlement Fund” as used herein means the Settlement Amount minus any award
17 of attorneys’ fees and Litigation costs, Administrative Costs, enhancement to the Named Plaintiff,
18 and civil penalties allocated to the California’s Private Attorney General Act (“PAGA”) claim (the
19 “PAGA Settlement”), and as provided in Sections VIII, XIII, XIV, XV, and XVI, respectively.

20 **L. Net Settlement Payments.** The term “Net Settlement Payment(s)” means payments
21 made to the Settlement Class from the Net Settlement Amount, less the employees’ portion of any
22 required federal and state tax withholdings. Net Settlement Payments will be each Class Member’s
23 proportional share of the Net Settlement Amount (which shall be determined using the calculations
24 provided in this Settlement).

25 **M. Settlement.** The term “Settlement” as used herein means this Agreement to resolve
26 the Litigation.

27 **N. Settlement Administrator.** The term “Settlement Administrator” as used herein
28 means Phoenix Class Action Administration Solutions, which will be responsible for the

administration of the Settlement Amount, as defined below, and all related matters.

O. Settlement Amount. The terms “Settlement Amount” as used herein means the sum of One Million Three Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$1,375,000.00), which shall be paid by Defendant to resolve this Litigation in exchange for the releases set forth in this Agreement, subject to Court approval, and from which all Net Settlement Payments, Court-approved attorneys’ fees and Litigation costs pursuant to Section XIII, Administrative Costs pursuant to Section VIII, enhancement to Named Plaintiff pursuant to Section XIV, and the PAGA Settlement pursuant to Section XVI shall be paid, except as provided herein. With the exception of the Employer Taxes and any amount that may be required under Section XI(C), in no event shall Defendant be required to pay anything more than the Settlement Amount.

P. Settlement Class. For settlement purposes only, the Parties agree to the certification of a class pursuant to California *Code of Civil Procedure* § 382 defined as:

All persons who were employed by Defendant in California and performed work for Defendant in California as a non-exempt employee during the Settlement Period (together, collectively referred to as the “Class Members”).

Q. Settlement Period. The term “Settlement Period” as used herein means the period from September 1, 2016 through January 19, 2022.

R. Aggrieved Employees. The Settlement Class or “Class Members” shall also include all Aggrieved Employees. Aggrieved Employees include:

All persons who were employed by Defendant in California and performed work for Defendant in California as a non-exempt employee during the PAGA Claim Period.

S. PAGA Claim Period. The “PAGA Claim Period” as used herein means the period from October 6, 2019 through January 19, 2022.

T. LWDA Payment. “LWDA Payment” means \$37,500, which represents 75% of the Fifty Thousand Dollars (\$50,000) being paid to resolve the claim for civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et. seq.* (“PAGA”) asserted in this Litigation (“PAGA Settlement”), and which will be paid to

1 the Labor and Workforce Development Agency pursuant to Section XVI of this Settlement,
2 subject to Court approval.

3 **U. Net PAGA Amount.** “Net PAGA Amount” means \$12,500, which represents
4 25% of the Fifty Thousand Dollars (\$50,000) being paid to resolve the claim for civil
5 penalties pursuant to PAGA, and which will be allocated and paid proportionately exclusively
6 to the Aggrieved Employees, pursuant to the formula set forth in Section XVI of this
7 Settlement, subject to Court approval.

8 **II. BACKGROUND**

9 **A.** In the Litigation, the Named Plaintiff alleges, *inter alia*, on behalf of himself and all
10 others similarly situated, that Defendant violated California state wage and hour laws, the California
11 *Business and Professions Code* Section 17200 *et seq.*, and PAGA, because of Defendant’s California
12 wage and hour policies and practices. Specifically, Plaintiff alleges Defendant failed to pay its
13 employees at or above the applicable minimum wage rates, failed to provide regular, overtime, and
14 double time pay, failed to pay all wages earned due to time rounding, failed to provide meal breaks
15 (including first and second meal breaks), failed to authorize and permit legally compliant rest breaks
16 each day based on the hours worked by each employee, and failed to provide reimbursements for all
17 necessary business-related expenses incurred by the class members. Plaintiff further alleged that the
18 aforementioned resulted in the employees receiving inaccurate wage statements, and the
19 underpayment of wages to employees upon termination and/or resignation.

20 Class Counsel conducted informal discovery concerning the claims set forth in the Litigation,
21 including a sample of class member timekeeping and payroll records, Defendant’s policies and
22 procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of
23 wage statements, and providing all wages at separation, as well as information regarding the number
24 of putative class members and the mix of current versus former employees, the wage rates in effect,
25 and the amount of meal and rest period premium wages paid to class members.

26 **B.** Named Plaintiff and Class Counsel have engaged in good faith, arms-length
27 negotiations with Defendant concerning possible settlement of the claims asserted in the Litigation.
28 The Parties participated in a full day of mediation before Steven J. Serratore, Esq., a well-respected

1 wage and hour class action mediator, that resulted in a tentative settlement of the Litigation, subject
2 to the approval of the Court, and finalization of a formal Stipulation of Settlement. The Parties have
3 engaged in extensive negotiations about the terms and conditions of the Settlement at the mediation
4 and subsequent thereto. The Parties have now formalized the Settlement Agreement for submission
5 to the Court for preliminary and Final Approval.

6 C. Class Counsel has conducted an investigation of the law and facts relating to the
7 claims asserted in the Litigation and has concluded, taking into account the sharply contested issues
8 involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation
9 through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of
10 an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be
11 received by the Named Plaintiff and the members of the Settlement Class pursuant to this Agreement,
12 that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable,
13 adequate, and in the best interests of the Settlement Class. Named Plaintiff, on his own behalf and
14 on behalf of the Settlement Class, has agreed to settle the Litigation with Defendant on the terms set
15 forth herein.

16 D. Defendant has concluded that, because of the substantial expense of defending against
17 the Litigation, the length of time necessary to resolve the issues presented herein, the inconvenience
18 involved, and the concomitant disruption to its business operations, it is in Defendant's best interests
19 to accept the terms of this Agreement. Defendant denies each of the allegations and claims asserted
20 against it in the Litigation. However, Defendant nevertheless desires to settle the Litigation for the
21 purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose
22 of putting to rest the controversies engendered by the Litigation.

23 E. This Agreement is intended to and does effectuate the full, final and complete
24 settlement of all allegations and claims that were asserted, or could have been asserted, in the
25 Litigation by Named Plaintiff and members of the Settlement Class as set forth in Section II(A).

26 **III. JURISDICTION**

27 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
28 Litigation includes claims that, while Defendant denies them in their entirety, would, if proven,

1 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
2 Final Approval of the Settlement and after the Court has ordered the entry of Judgment, pursuant to
3 California *Code of Civil Procedure* Section 664.6 the Court shall retain jurisdiction of this action
4 solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with
5 the terms set forth herein.

6 **IV. STIPULATION OF CLASS CERTIFICATION**

7 The Parties stipulate to the certification of this Settlement Class for purposes of Settlement
8 only. This Stipulation is contingent upon the Preliminary and Final approval and certification of the
9 Settlement Class only for purposes of Settlement. Should the Settlement not become final, for
10 whatever reason, the fact that the Parties were willing to stipulate provisionally to class certification
11 as part of the Settlement shall have no bearing on, and shall not be admissible in connection with,
12 the issue of whether a class should be certified in a non-settlement context in the Litigation.
13 Defendant expressly reserves the right to oppose class certification and/or proactively move to deny
14 certification should this Settlement be modified or reversed on appeal or otherwise not become final.

15 **V. MOTIONS FOR PRELIMINARY AND FINAL APPROVAL**

16 Named Plaintiff will bring a motion before the Court for an order preliminarily approving the
17 Settlement including the Notice of Proposed Class Action Settlement, in a form substantially similar
18 to that which is attached hereto as **Exhibit “A”**, and including certification of the Settlement Class
19 for settlement purposes only.

20 The date that the Court grants Preliminary Approval of this Agreement will be the
21 “Preliminary Approval Date.” Class Counsel will prepare the Motion for Preliminary Approval and
22 will provide Defendant’s counsel the opportunity to review it and provide input at least three business
23 days before it is due to be filed. On the same date on which it is filed with the Court, Class Counsel
24 shall concurrently submit the Motion for Preliminary Approval to the Labor & Workforce
25 Development Agency in compliance with Labor Code § 2698 *et seq.*, the Private Attorneys General
26 Act.

27 On the date set forth in the order granting preliminary approval of this Settlement or otherwise
28 set by the Court, a final fairness and approval hearing shall be held before the Court to review this

1 Settlement, consider any objections thereto, and determine whether to grant final approval of the
2 Settlement and enter judgment on the same. Named Plaintiff will prepare the Motion for Final
3 Approval and will provide Defendant's counsel the opportunity to review it and provide input at least
4 three business days before it is due to be filed.

5 At the motion for final approval hearing, the Parties shall ask the Court to give final approval
6 to this Settlement and Plaintiff shall submit to the Court a proposed Final Approval Order and
7 Judgment granting final approval of this Settlement and entering Judgment.

8 **VI. STATEMENT OF NO ADMISSION**

9 **A.** Defendant denies liability to Named Plaintiff and to the Settlement Class upon any
10 claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an
11 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
12 made against them in the Litigation.

13 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor any
14 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
15 during the course of the negotiations leading to this Agreement or the Settlement, is intended by the
16 Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible
17 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or
18 proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
19 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
20 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or
21 any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
22 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or
23 executive order, or any obligation or duty at law or in equity, or for any other purpose.
24 Notwithstanding the foregoing, this Agreement may be used and filed in any proceeding before the
25 Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement
26 or any orders or judgments of the Court entered in connection with implementation of the Settlement.

27 **C.** None of the documents produced or created by Named Plaintiff or the Settlement
28 Class in connection with the settlement administration and procedures constitute, and they are not

intended to constitute, an admission by Defendant of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

D. The Parties agree that class certification pursuant to California *Code of Civil Procedure* Section 382 under the terms of this Agreement is for settlement purposes only, and that certification of the class as defined herein is appropriate and meets the standards set forth in California Code of Civil Procedure section 382. Nothing in this Agreement will be construed as an admission or acknowledgment of any kind that any class should be certified or given collective treatment in the Litigation or in any other action or proceeding. Further, neither this Agreement nor the Court's actions with regard to this Agreement will be admissible in any court or other tribunal regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any way any of their objections or defenses in the Litigation.

VII. WAIVER, RELEASE AND CONFIDENTIALITY

A. Release as to All Settlement Class Members.

Upon the date the Court's Final Approval Order becomes "Final" (as that term is defined in Section I(E) above), Named Plaintiff, on behalf of himself and the State of California, and all members of the Settlement Class, including their heirs, agents, representatives, successors, assigns, and estates, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, shall be deemed to have fully, finally, and forever waived, released, discharged, and promised never to assert in any forum any and all claims, causes of action, demands, rights, and liability that were alleged in the Second Amended Complaint or which could have been alleged in the Second Amended Complaint based on the facts and allegations asserted therein arising during the Settlement Period against Defendant, and its parents, subsidiaries, affiliates, officers, shareholders, directors, agents, employees, attorneys, and insurers ("Released Parties"), including any claims for violation of the California Labor Code or any other state, local, or federal law, statute, regulation or ordinance imposing liability and/or obligations that could be brought based on the

allegations in the Second Amended Complaint, through the Settlement Period, including the Fair Labor Standards Act (the “Released Claims”). This release specifically includes claims for any wages, statutory penalties, civil penalties, liquidated damages, interest, restitution, attorneys’ fees and costs for the following: 1) all claims, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute under any theory of liability, including the Fair Labor Standards Act (FLSA); 2) all claims, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum wage or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, 1197, and 1198, the IWC Wage Orders, local minimum wage ordinances, or any comparable federal statute under any theory of liability, including the Fair Labor Standards Act (FLSA); 3) all claims, under any legal theory of liability, for failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b), and the IWC Wage Orders; 6) all claims, under any legal theory of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; 7) all claims, under any legal theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 8) all claims, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 9) all claims, under any legal theory of liability, for any penalties of any kind arising from any alleged wage statement violations pursuant to California Labor Code §§ 226, 1174, and 1174.5; and 10-1) all claims, under any legal theory of liability, for civil penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*) for the various Labor Code violations alleged, including penalties pursuant to California Labor Code §§ 210, 226.3, 1174.5, 558, and 1197.1.

B. Release of Plaintiff, State of California, and Aggrieved Employees

Upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in

Section I(E) above), Named Plaintiff, on behalf of himself and the State of California, and all Aggrieved Employees, including their heirs, agents, representatives, successors, assigns and estates, shall be deemed to have fully, finally and forever released and discharged the Released Parties from any and all causes of action, claims, demands, rights, and liability, arising from or based on a claim for civil penalties under PAGA, Labor Code sec. 2698, *et seq.*, for any violations of the Labor Code or Wage Orders alleged or that could have been alleged in Plaintiff's Second Amended Complaint based on the facts and allegations alleged therein, as well as any based on the alleged violations asserted in the October 6, 2020 Notice of Labor Code Violations and PAGA Penalties and the November 19, 2021 Amended Notice of Labor Code Violations and PAGA Penalties.

C. General Release by Named Plaintiff Only.

In addition, upon the date the Court's Final Approval Order becomes "Final," Named Plaintiff for himself, and his heirs, successors, predecessors, attorneys, agents, representatives and assigns, fully and forever releases and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, penalties, liquidated damages, and attorneys' fees and costs actually incurred) of any nature whatsoever, from the beginning of time through the date of his signature on this Settlement, known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to his employment with Defendant or the remuneration for such employment. Without limiting the generality of the foregoing, Named Plaintiff expressly releases all claims which were or could have been raised in the Litigation and all claims or rights arising out of alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith or fair dealing (express or implied); any tort, including negligence, fraud, misrepresentation under California Labor Code section 970, negligent infliction of emotional distress, intentional infliction of emotional distress, and defamation; any "retaliation" claims; any claims relating to any breach of public policy; any legal restrictions on Defendant's right to discharge employees or refuse to hire applicants; and any federal, state, or other governmental statute, regulation, or ordinance, including, without limitation: (1) Title VII of the Civil

1 Rights Act of 1964 (race, color, religion, sex, and national origin discrimination or harassment,
 2 including retaliation for reporting discrimination or harassment); (2) 42 U.S.C. § 1981
 3 (discrimination); (3) sections 503 and 504 of the Rehabilitation Act of 1973 (disability
 4 discrimination); (4) Equal Pay Act, 29 U.S.C. § 209(4)(1) (equal pay); (5) Americans with
 5 Disabilities Act, 42 U.S.C. § 12100 *et seq.* (disability discrimination); (6) Family and Medical Leave
 6 Act, 29 U.S.C. § 2601 *et seq.* (family/medical leave); (7) California Fair Employment and Housing
 7 Act, Cal. Gov't Code § 12900 *et seq.* (discrimination or harassment in employment and/or housing,
 8 including discrimination or harassment based on race, religious creed, color, national origin,
 9 ancestry, physical or mental disability, marital status, sex (including pregnancy), sexual orientation,
 10 genetic, or age, including retaliation for reporting discrimination or harassment); (8) California
 11 Family Rights Act, Cal. Gov't Code § 12945.1 *et seq.* (family/medical leave); (9) California Labor
 12 Code or any Industrial Welfare Commission Wage Order; (10) the Fair Labor Standards Act, 29
 13 U.S.C. § 201 *et seq.*; (11) Executive Order 11246 (race, color, religion, sex, and national origin
 14 discrimination or harassment); (12) Executive Order 11141 (age discrimination); and (13) Employee
 15 Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (employee benefits).

16 **D. Plaintiff's Release of Unknown Claims.**

17 In addition to the releases made in Sections VII (A), (B), and (C) above, Named Plaintiff, in
 18 his individual capacity, makes the additional following express waiver of California Civil Code
 19 section 1542, or any law or principle of common law or equity that is similar, comparable, or
 20 equivalent. For the purpose of implementing a full and complete release, Plaintiff expressly
 21 acknowledges that the release given in this Settlement is intended to include in its effect (without
 22 limitation) claims that he did not know or suspect to exist in his favor at the time of execution of this
 23 Settlement, regardless of whether the knowledge of such claims, or the facts upon which they might
 24 be based, would materially have affected the settlement of this matter, and that the consideration
 25 given under the Settlement was also for the release of those claims and contemplates the
 26 extinguishment of any such unknown claims.

27 Named Plaintiff stipulates and agrees that, upon the date the Court's Final Approval Order
 28 becomes "Final", Named Plaintiff shall be deemed to have expressly waived and relinquished, to the

1 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California
2 Civil Code, or any other similar provision under federal or state law, which provides:

3
4 **“SECTION 1542. [CERTAIN CLAIMS NOT AFFECTED BY**
5 **GENERAL RELEASE.] A GENERAL RELEASE DOES NOT**
6 **EXTEND TO CLAIMS THAT THE CREDITOR OR**
7 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
8 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**
9 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
10 **HIM OR HER WOULD HAVE MATERIALLY AFFECTED**
11 **HIS OR HER SETTLEMENT WITH THE DEBTOR OR**
12 **RELEASED PARTY.”**

13 Accordingly, even if the facts relating in any manner to this Settlement are found hereafter to be
14 other than or different from the facts Plaintiff now knows or believes to be true, or if Plaintiff
15 hereafter discovers facts in addition to those he now knows or believes to be true, Named Plaintiff,
16 upon the date the Court’s Final Approval Order becomes “Final”, shall be deemed to have fully,
17 finally, and forever settled and released any and all claims against the Released Parties that were
18 alleged or could have been alleged in the Litigation, as well as any other claims, whether known or
19 unknown, suspected or unsuspected, contingent or non-contingent, that now exist, upon any theory
20 of law or equity, including without limitation, conduct which is negligent, intentional, with or without
21 malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence
22 of such different or additional facts.

23 **VIII. SETTLEMENT ADMINISTRATOR**

24 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix
25 Class Action Administration Solutions as the Settlement Administrator to administer the Settlement,
26 which includes but is not limited to distributing and responding to inquiries about the Notice of
27 Proposed Class Action Settlement, determining the validity of any disputes and opt-outs, calculating
28 the Net Settlement Amount and all amounts to be paid from the Net Settlement Amount, distribution
of the Net Settlement Amount, providing weekly reporting to Class Counsel and Defendant’s
Counsel, administering and making payment of any funds remaining from uncashed checks, and
making all necessary tax withholding and payments and preparing all tax reporting to the appropriate

1 taxing authorities. The Settlement Administrator shall agree to all of the terms and conditions of this
2 Settlement.

3 All Administrative Costs associated with the foregoing duties, estimated to be no more
4 \$15,000.00, will be paid from the Settlement Amount, not in addition to the Settlement Amount.
5 Any charges and expenses of the Settlement Administrator greater than the allocated \$15,000.00 will
6 come from the Settlement Amount. If the actual Settlement Administrator fees are less than the
7 Parties' estimation, the difference between the actual and estimated Settlement Administrator fees
8 will revert to the Net Settlement Amount. The Parties agree that this Agreement may be provided to
9 the Settlement Administrator to effectuate its implementation of the settlement procedures herein.

10 The Parties understand and agree that the Settlement Amount will qualify and be
11 characterized as a Qualified Settlement Fund ("QSF") under the provisions of the U.S. Treasury
12 Regulations 1.468B-1 and 1.468B-5, and the QSF will be taxed as a separate entity for purposes
13 of all federal, state and local taxes, and further agree to treat the QSF on a basis consistent
14 therewith, and the QSF will bear full responsibility for all taxes associated with the QSF and
15 payments under this Agreement.

16 All taxes (including any interest or penalties) arising with respect to income earned by the
17 QSF, shall be paid from the QSF. All expenses and costs incurred in connection with the operation
18 and implementation of this section (including without limitation, expenses of attorneys and/or
19 accountants and mailing and distribution expenses related to filing (or failing to file) any necessary
20 tax returns) shall be paid from the QSF by the Settlement Administrator.

21 **IX. NOTICE, OBJECTIONS AND EXCLUSION RIGHTS**

22 **A. Notice.**

23 The Notice of Class Action and Proposed Settlement (the "Notice") will be provided to the
24 members of the Settlement Class as follows:

25 No later than thirty (30) calendar days after the Court's Preliminary Approval order,
26 Defendant will provide to the Settlement Administrator the following information about each
27 Settlement Class Member ("Class List"): (1) name; (2) last known home address; (3) the dates of
28 employment for each Settlement Class Member; and (4) Social Security number. Defendant further

1 agrees to consult with the Settlement Administrator prior to the production date to ensure that the
2 format will be acceptable to the Settlement Administrator. This information shall be treated as
3 confidential and shall not be disclosed to Plaintiff, Class Counsel or any other person without prior
4 approval from Defendant's Counsel.

5 The Settlement Administrator shall run all the addresses provided through the United States
6 Postal Service NCOA database (which provides updated addresses for any individual who has moved
7 in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain
8 current address information, and shall mail the Notice to the members of the Settlement Class via
9 first-class regular U.S. Mail using the most current mailing address information available, within
10 twenty (20) calendar days of the receipt of the Class List from Defendant. The Notice shall provide
11 the members of the Settlement Class forty-five (45) days' notice of all applicable dates and deadlines.

12 The Notice will also include information regarding the nature of the Litigation; a summary
13 of the terms of the Settlement; the definition of the Settlement Class; a statement that the Court has
14 preliminarily approved the Settlement; the nature and scope of the claims being released; the
15 procedure and time period for objecting to or requesting exclusion from the Settlement, the date and
16 location of the Final Approval hearing; the number of Eligible Workweeks, as defined in Section
17 XI(A) below, that each Settlement Class Member has worked as a non-exempt employee in
18 California at any time during the Settlement Period, and the estimated potential recovery for the
19 proposed Settlement Class Member.

20 For each Settlement Class Member, the Notice will identify the number of Eligible
21 Workweeks that s/he was employed and inform the employee of his or her right to dispute this
22 number by submitting a dispute within forty-five (45) days of the postmark date of the Notice Absent
23 the receipt of a dispute, the number of workweeks identified in the Notice shall be deemed accurate.
24 The settlement of any disputes concerning the number of Eligible Workweeks is discussed in Section
25 X, below.

26 If a Notice is returned from the initial notice mailing, the Settlement Administrator will
27 perform a skip trace in an attempt to locate a more current address. If the Settlement Administrator
28 is successful in locating a new address, it will re-mail the Notice to the Settlement Class Member.

Further, any Notices returned with a forwarding address to the Settlement Administrator, as non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. The Settlement Administrator will remail all returned, undelivered mail within five (5) days of receiving notice that a Notice was undeliverable. If a Class Member's notice is re-mailed, that Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, in which to mail a Request for Exclusion or objection to the Settlement. Class Members shall not be required to submit claim forms in order to receive their Net Settlement Payments.

It is the intent of the Parties that reasonable means be used to locate Class Members and that the Settlement Administrator be given discretion to take steps to facilitate notice of this Settlement and delivery of the Net Settlement Payments to the Settlement Class. If no address can be determined by the Settlement Administrator after these efforts, no further efforts to determine an address shall be required.

Should any member of the Settlement Class timely submit a dispute or Request for Exclusion with a deficiency, the Settlement Administrator shall, within five (5) calendar days of receipt by the Settlement Administrator of each timely submitted dispute or Request for Exclusion send a deficiency notice. The deficiency notice will provide the member of the Settlement Class no more than fifteen (15) days from the mailing of the deficiency notice to postmark a written response to cure all deficiencies. The failure of a member of the Settlement Class to timely submit a dispute or Request for Exclusion or timely respond to a notice of deficiency shall invalidate the dispute or Request for Exclusion unless all Parties' counsel agree to allow the dispute or Request for Exclusion.

In the event a Class Member's Notice remains undeliverable sixty (60) days after the Notice was initially mailed, the Settlement Administrator will not mail the Class Member's Net Settlement Payment. The Settlement Administrator will hold the Class Member's Net Settlement Payment during the check cashing period on behalf of the Class Member. If at the conclusion of the check cashing period the Class Member's Notice and Net Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the procedures set forth in Section XI(D) below.

1 Upon the date the Court's Final Approval Order becomes "Final", all Class Members and Aggrieved
2 Employees will be bound by this Settlement and the Releases herein, regardless of whether or not
3 they received a Net Settlement Payment or a portion of the Net PAGA Amount.

4 No later than twenty-five (25) days before the Final Approval Hearing, the Settlement
5 Administrator shall provide counsel for Defendant and Class Counsel with a declaration attesting to
6 the completion of the Notice process, including the number of attempts to obtain valid mailing
7 addresses for and re-sending of any returned Notices, as well as the number of disputes, Requests for
8 Exclusion, objections, and deficiencies that the Settlement Administrator received.

9 Compliance with the procedures described in this section shall constitute due and
10 sufficient notice to Class Members of this proposed Settlement and the final approval hearing
11 and shall satisfy the requirements of due process. Nothing else shall be required of the Parties,
12 Class Counsel, Defendant's Counsel, or the Settlement Administrator to provide notice of the
13 proposed Settlement and the final approval hearing. However, if any Class Member objects to
14 the Settlement and the final approval hearing is continued as a result, the Settlement
15 Administrator shall provide notice to the objecting party of the continued hearing date.

16 **B. Objections.**

17 Named Plaintiff may not object to the Settlement. In order for any Settlement Class Member
18 to object to this Settlement, or any term of it, the person making the objection must not submit a
19 Request for Exclusion (i.e., must not opt out). To object to the Settlement in writing, a Class Member
20 must complete, sign, and send a written notice of objection to the Settlement Administrator,
21 postmarked no later than forty-five (45) days after the Notice was initially mailed to the Class
22 Members, setting forth the grounds for the objection, along with all supporting documents, the Class
23 Member's name, address, telephone number and reference to this Litigation, along with whether they
24 intend to appear at the final approval hearing, either personally or through an attorney at his or her
25 own expense. The date of mailing of the Notice to the objecting Settlement Class Member, and the
26 date the signed Objection was postmarked, shall be conclusively determined according to the records
27 of the Settlement Administrator. The Settlement Administrator shall send any objection it receives
28 to Defendant's Counsel and Class Counsel within three (3) business days of receipt. Class Counsel

1 shall file any objections and the Parties' responses thereto with the Court with the motion for final
2 approval. The Court retains final authority with respect to the consideration and admissibility of
3 any Settlement Class member objections. All Class Members who do not submit timely written
4 objections to the Settlement hereby waive any and all rights to appeal from the Final Approval Order.

5 If a Settlement Class Member objects to the Settlement, the Settlement Class member will
6 remain a member of the Settlement Class and if the Court approves this Agreement, the Settlement
7 Class Member will be bound by the terms of the Settlement and Final Approval Order in the same
8 way and to the same extent as a Settlement Class Member who does not object.

9 **C. Opportunity to be Excluded and Defendant's Opt-Out Threshold.**

10 In order for any Settlement Class Member to validly exclude himself or herself from the
11 Settlement Class and the Settlement (i.e., to validly opt out), a written request for exclusion ("Request
12 for Exclusion") must be completed and signed and dated by the Settlement Class Member or his or
13 her authorized representative and must be sent to the Settlement Administrator, postmarked no later
14 than forty five (45) days after the date the Settlement Administrator initially mails the Notice to the
15 Settlement Class Members. A Request for Exclusion must state (1) the Class Member's name, (2) the
16 Class Member's address, (3) the Class Member's telephone number, and (4) a clear statement that
17 the Class Member "opts out" or otherwise requests exclusion from the Class and Settlement. The
18 Notice shall contain instructions that the Request for Exclusion must be mailed and signed, the date
19 by which it must be mailed, and also state the name and address of the Settlement Administrator.

20 The date of the initial mailing of the Notice, and the date the signed Request for Exclusion
21 was postmarked, shall be conclusively determined according to the records of the Settlement
22 Administrator. Any Settlement Class Member who timely and validly submits a Request for
23 Exclusion from the Settlement Class and the Settlement will not be entitled to any portion of the Net
24 Settlement Payments, will not be bound by the terms and conditions of the Settlement, and will not
25 have any right to object, appeal, or comment thereon.

26 Any member of the Settlement Class who does not timely file and mail a Request for
27 Exclusion from the Settlement Class will be deemed included in the Settlement Class in accordance
28 with this Settlement.

Notwithstanding the foregoing, no Aggrieved Employee may exclude themselves from the Settlement of the PAGA claim asserted in the Litigation. In the event a Class Member submits both an objection and a Request for Exclusion, the Request for Exclusion will govern. The Settlement Administrator will provide Class Counsel and Defendant's Counsel with a list of all those individuals who have submitted Requests for Exclusion within sixty days of the date of mailing of the Notice, to be supplemented as necessary. In the event that five percent (5%) or more of the Class Members exercise their right to exclude themselves and opt out of the Settlement and Settlement Agreement, Defendant retains the exclusive right, but not the obligation, to withdraw from and terminate the Settlement and the Settlement Agreement and return all parties back to their same position before the Settlement was reached and the Settlement Agreement was entered into. In the event that Defendant exercises such rights under this paragraph, this Agreement shall be null and void and Plaintiff and Defendant shall resume the Litigation through and until there is a final judgment in the Litigation. Defendant must notify Class Counsel and the Court of such a decision to withdraw and terminate the Settlement no later than five (5) days prior to the date of the Final Approval Hearing. In the event of Defendant's withdrawal, no party may use the fact that the Parties agreed to the Settlement for any reason, and the Parties shall split equally all administration expenses incurred through the date of the termination of the Settlement.

D. Cooperation

The Parties and their respective counsel agree not to encourage members of the Settlement Class to refrain from participating in the Settlement, to opt out of the Settlement, or to object to the Settlement, directly or indirectly, through any means. However, if a Settlement Class Member contacts Class Counsel, Class Counsel may discuss the terms of the Settlement and the Settlement Class Member's options.

X. DISPUTES PROCEDURE

Named Plaintiff and Defendant have agreed upon the following procedure to resolve all disputes submitted by Settlement Class Members during the Settlement Period.

If a member of the Settlement Class disputes the number of Eligible Workweeks set forth in the Notice, such person must follow the directions in the Notice, including preparing a statement

1 setting forth the number of Eligible Workweeks that such person believes in good faith is correct,
 2 and stating that the member of the Settlement Class authorizes the Settlement Administrator to
 3 request information from Defendant to determine such information, and attaching any supporting
 4 documentation. The member of the Settlement Class must mail the signed and completed statement
 5 no later than forty-five (45) days after the date of the mailing of the Notice, or the number of Eligible
 6 Workweeks set forth in the Notice will govern the Net Settlement Payment to the member of the
 7 Settlement Class.

8 Upon timely receipt of any such challenge, the Settlement Administrator, in consultation with
 9 Class Counsel and counsel for Defendant, will work with counsel in good faith to resolve it. After
 10 consulting with Class Counsel and counsel for Defendant, the Settlement Administrator shall
 11 compute the number of Eligible Workweeks to be used in computing the Settlement Class member's
 12 pro rata share of the Net Settlement Amount. In the event there is a disparity between the dates a
 13 Settlement Class member claims he or she worked during the Settlement Period and the dates
 14 indicated by Defendant's records, Defendant's records will control unless inconsistent with
 15 supporting documentation (e.g., paycheck stub(s) (or bona fide copies thereof)) provided by the
 16 Settlement Class member, in which case the supporting documentation will control. The Settlement
 17 Administrator's decision as to the total number of Eligible Workweeks shall be final and non-
 18 appealable. The Settlement Administrator shall send written notice of the decision on any such claim
 19 to the Settlement Class Member, to Class Counsel, and counsel for Defendant.

20 **XI. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

21 **A. Distribution Formula.**

22 Members of the Settlement Class not opting out will receive a lump sum payment as good
 23 and valuable consideration for the waiver and release of claims set forth in Section VII(A), above,
 24 in an amount determined by the Settlement Administrator in accordance with the provisions of this
 25 Agreement.

26 The lump sum payment to each member of the Settlement Class not excluding him/ herself
 27 will be determined in accordance with the procedure set forth below.

28 The Settlement Administrator will calculate the total number of workweeks for all Class

Members who were employed by Defendant during the Settlement Period based on their dates of employment during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Fund by the total number of Workweeks worked by all Class Members who do not opt out in accordance with Section IX(C) above during the Settlement Period (“Workweek Point Value”).

A “Net Settlement Payment” for each Class Member will then be determined by multiplying a Class Member's workweeks worked during the Settlement Period (“Eligible Workweeks”) by the Workweek Point Value. The Net Settlement Payment will be reduced by any required legal deductions, for each participating Class Member.

B. Funding of Settlement.

No later than 7 calendar days after the date the Court’s Final Approval Order becomes “Final”, Defendant will deposit the Settlement Amount and the Employer Taxes into an account established by the Settlement Administrator either directly or by sending the funds to the Settlement Administrator to be deposited and distributed. All of Defendant’s obligations under this Settlement are deemed to be satisfied upon Defendant’s timely deposit of the Settlement Amount and Employer Taxes and acknowledgement of receipt of said funds and Defendant shall have no further obligations to the Settlement Class including, without limitation, any further obligations to make any other payments of any kind to, or on behalf of, the Settlement Class.

C. Potential Increase in Funding

Defendant represents that there are approximately 53,000 Total Workweeks at issue for the Settlement Class Members. In the event the number of Total Workweeks worked by the Settlement Class Members increases by more than 10%, or 5,300 Workweeks, then the Settlement Amount shall be increased proportionally by the Total Workweeks in the Settlement Period in excess of 58,300 multiplied by \$25.94. The Settlement Amount will not be reduced due to Defendant’s estimate that there are approximately 53,000 Total Workweeks at issue for the Settlement Class Members.

D. Time for Distribution.

The Settlement Administrator shall cause the Settlement Amount (inclusive of the Net Settlement Payments, the Court approved attorney’s fees and Litigation costs, Court approved

enhancement to Named Plaintiff, Administrative Costs, and PAGA Settlement) to be distributed within twenty-one (21) calendar days following the funding of the Settlement Amount.

If a Class Member check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be deemed unpaid residue pursuant to Code of Civil Procedure Section 384(a) and shall be paid to Legal Aid at Work at 180 Montgomery Street, Suite 600, San Francisco, CA 94104. Pursuant to Code of Civil Procedure section 384, the Court shall set a compliance hearing no earlier than one year following the Date of Final Approval. No later than five (5) court days before the hearing, the Parties shall file a report with the Court specifying the total amount paid to Class Members, and the residual of unclaimed funds that will be disbursed *cy pres*, along with a proposed amended judgment

XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN

The amounts paid under this Agreement do not represent a modification of any previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies or bonus programs. Any payments made under the terms of this Settlement shall not be applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the language of its benefit plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement.

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XIII. CLASS COUNSEL'S ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel shall make a separate motion or submit an application, at their election, for an award of reasonable attorneys' fees. Defendant shall not oppose a request by Class Counsel for, and Class Counsel shall not seek or receive an amount in excess of \$458,333.33, which represents 33 1/3% of the Settlement Amount for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement.

Additionally, Class Counsel shall submit an application for actual Litigation costs incurred and necessary to prosecute, settle and administer the Litigation and this Settlement, in an amount not to exceed \$25,000, which Defendant shall not oppose. Any attorneys' fees or Litigation costs awarded to Class Counsel by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount, and shall not be paid in addition to the Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Class Counsel in defending the Settlement and securing preliminary and Final Approval (including any appeals therein). There will be no additional charge of any kind to either the members of the Settlement Class or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs, and expenses for which Named Plaintiff and Class Counsel could claim under any legal theory whatsoever.

Within twenty-one (21) calendar days following the funding of the Settlement Amount, the Settlement Administrator shall disburse payment from the Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to Class Counsel. Should the Court approve a lesser percentage or amount of fees and/or Litigation costs than the amount that Class Counsel ultimately seeks, then any such unapproved portion or portions shall revert to the Net Settlement Amount. For purposes of settling this matter only, Defendant agrees that Wilshire Law Firm PLC is adequate Class Counsel.

XIV. ENHANCEMENT TO NAMED PLAINTIFF

Defendant shall not oppose an application by Named Plaintiff and Named Plaintiff shall not seek or receive an amount in excess of \$10,000.00 for his participation in and assistance with the

Litigation (*i.e.*, Named Plaintiff's class representative enhancement/service award). Any enhancement awarded to Named Plaintiff by the Court as part of the Settlement Amount shall be deducted from the Settlement Amount for the purpose of determining the Net Settlement Amount and shall not be paid in addition to the Settlement Amount. The enhancement shall be reported on an IRS Form 1099. If the Court approves an enhancement of less than \$10,000.00 to Named Plaintiff, then the unapproved portion or portions shall revert to the Net Settlement Amount. For purposes of settling this matter only, Defendant agrees that Plaintiff Darrell Colter should be deemed adequate to represent the Class.

Although it is the contemplation of the Parties that the enhancement represents payment to Named Plaintiff for service to the Settlement Class and does not represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other taxing authority may take the position that some or all of the enhancement constitutes wages for income tax and withholding purposes. Plaintiff agrees to assume the responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant from the enhancement paid under this Settlement. In addition, Plaintiff shall hold Defendant, Released Parties, Class Counsel, and the Settlement Administrator harmless for any taxes, interest, penalties, other payments and costs, incurred by reason of any valid claims by taxing authorities relating to Plaintiff's alleged failure to pay any owed taxes.

XV. TAXATION AND ALLOCATION

The Parties agree that all employment taxes and other legally required withholdings will be withheld from payments to the members of the Settlement Class and Named Plaintiff based on the Parties' stipulated allocation of the Net Settlement Amount as provided for in this Section.

For withholding tax characterization purposes and payment of taxes, the Net Settlement Payments shall be allocated by the Parties as follows ("Net Settlement Allocation"):

- (1) 10% as wages;
- (2) 45% as penalties; and
- (2) 45% as interest.

1 The amounts paid as wages shall be subject to all tax withholdings customarily made from
2 an employee's wages and all other authorized and required withholdings and shall be reported by W-
3 2 forms. The employer-side taxes (including employer's portion of FICA, FUTA, SUTA, and all
4 other applicable payroll taxes) will be paid by Defendant separate from and in addition to the
5 Settlement Amount, as calculated by the Settlement Administrator. The amounts paid as penalties
6 and interest shall be subject to all authorized and required withholdings other than the tax
7 withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.
8 Defendant shall not make as part of this Settlement, nor be required to make, any deductions, nor
9 pay any monthly contributions for any insurance, retirement, 401(k) or profit-sharing plans, or any
10 benefit plans related to monies paid as a result of this Settlement.

11 The Parties and counsel for the Parties make no representation as to the tax treatment or legal
12 effect of the payments called for under this Settlement. Named Plaintiff and Class Members are
13 solely responsible for any and all tax obligations related to such payments. In addition, Class
14 Members and Aggrieved Employees shall hold Defendant, Released Parties, Class Counsel, and the
15 Settlement Administrator harmless from and against any claims for taxes, interest, penalties, other
16 payments and costs by taxing authorities relating to Class Members' and/or Aggrieved Employees'
17 alleged failure to pay any taxes owed by virtue of payments made pursuant to this Agreement.

18 **XVI. PRIVATE ATTORNEYS GENERAL ACT ALLOCATION**

19 In order to implement the terms of this Settlement and to settle claims alleged under the
20 Private Attorneys General Act of 2004, California *Labor Code* section 2698 *et seq.*, the Parties agree
21 to allocate \$50,000.00 from the Settlement Amount, not in addition to the Settlement Amount, as
22 civil penalties as a fair and reasonable settlement of this claim. Seventy-five percent (75%) of this
23 PAGA Settlement will be paid to the Labor and Workforce Development Agency ("LWDA
24 Payment") and 25% of this amount will be distributed to the Aggrieved Employees ("Net PAGA
25 Amount"), through the Settlement Administrator and at no additional cost to Defendant. The Court's
26 adjustment, if any, of the amount allocated to the PAGA claim will not invalidate this Settlement.

27 The Parties agree that, as to the PAGA claim, no Class Member or Aggrieved Employee can
28 exclude themselves from that portion of the Settlement and that, absent an order granting leave to

1 intervene in the Litigation, no individual has standing to object to the Settlement of the PAGA Claim.
2 Any Class Member who is also an Aggrieved Employee, i.e. was employed in a non-exempt position
3 in California during the PAGA Period, and requests exclusion from the Class will still receive their
4 portion of the Net PAGA Amount.

5 Class Counsel will submit a copy of this Settlement and the motions for approval to the
6 LWDA, as required by Labor Code section 2699(1)(2). Class Counsel will attach a copy of the
7 confirmation of submission to the LWDA as an exhibit to their motion for preliminary approval and
8 will submit a copy of the Final Approval Order and Judgment to the LWDA within 10 days of its
9 entry, as required by Labor Code section 2699(1)(3). Within twenty-one (21) calendar days following
10 the funding of the Settlement Amount, the Settlement Administrator shall disburse the PAGA
11 Settlement to the California Labor and Workforce Development Agency ("LWDA"). The Net PAGA
12 Amount shall be divided and paid to all Aggrieved Employees (including those Class Members who
13 have objected or opted out of the class settlement) in proportion to their respective number of Eligible
14 Workweeks in the PAGA Claim Period. Each Aggrieved Employee's share of the 25% portion of
15 the Net PAGA Amount will be determined by dividing their total weeks worked within the PAGA
16 Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period.
17 That fraction will then be multiplied by the 25% portion of the Net PAGA Amount to arrive at the
18 Aggrieved Employee's individual share. These payments to Aggrieved Employees shall be allocated
19 as 100% penalties. Aggrieved Employees will be responsible for paying any personal income taxes
20 owed on the amounts they received.

21 **XVII. COURT APPROVAL**

22 This Agreement and the Settlement is contingent upon Final Approval by the Court and the
23 entry of judgment. Named Plaintiff and Defendant agree to take all steps as may be reasonably
24 necessary to secure both Preliminary Approval and Final Approval of the Settlement, to the extent
25 not inconsistent with the terms of this Agreement, and will not take any action adverse to each other
26 in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.
27 Named Plaintiff and Defendant expressly agree that they will not file any objection to the terms of
28 the Settlement or assist or encourage any person or entity to file any such objection.

1 In the event the Parties are unable to secure Court approval of the Settlement, the Parties shall
2 be restored to their respective positions in the Litigation, as of the date of the hearing on the Motion
3 for Preliminary Approval, except as otherwise provided in Section XVIII below, and the Parties shall
4 split equally all administration expenses incurred through that date.

5 **XVIII. MISCELLANEOUS PROVISIONS**

6 **A. Stay of Litigation.**

7 Named Plaintiff and Defendant agree to the stay of all discovery in the Litigation, pending
8 Final Approval of the Settlement by the Court.

9 **B. Interpretation of the Agreement.**

10 This Agreement constitutes the entire agreement between Named Plaintiff and Defendant.
11 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
12 other written or oral representations or terms, and no such extrinsic oral or written representations or
13 terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree
14 that this Agreement is to be construed according to its terms and may not be varied or contradicted
15 by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State
16 of California, both in its procedural and substantive aspects, without regard to its conflict of laws
17 provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will
18 be resolved solely and exclusively in the Superior Court of the State of California for the County of
19 San Diego, and Named Plaintiff and Defendant hereby consent to the personal jurisdiction of the
20 Court over them solely in connection therewith. Named Plaintiff, on his own behalf and on behalf
21 of the Settlement Class and Aggrieved Employees, and Defendant participated in the negotiation and
22 drafting of this Agreement and had available to them the advice and assistance of independent
23 counsel. As such, neither Named Plaintiff nor Defendant may claim that any ambiguity in this
24 Agreement should be construed against the other.

25 The terms and conditions of this Agreement constitute the exclusive and final understanding
26 and expression of all agreements between Named Plaintiff and Defendant with respect to the
27 Settlement of the Litigation. The Agreement may be modified only by a writing signed by the
28 original signatories and approved by the Court.

C. Further Cooperation.

Named Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

D. Confidentiality of Documents.

The terms of this Settlement shall remain confidential until the motion for preliminary approval is filed. Except for communications between Class Counsel and Class Members, Named Plaintiff and Class Counsel agree not to make any public statements, issue any pressure releases, place information regarding this settlement on their web site, or make any other announcements publicizing this settlement. After the expiration of any appeals period, Named Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all documents, declarations and other information obtained in the lawsuit, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

E. Counterparts.

The Agreement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals.

F. Authority.

Each individual signing below warrants that he or she has the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. Assignment

None of the rights, commitments, or obligations recognized under this Settlement may be assigned by any Party, Class Member, Class Counsel, or Defendant's Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Settlement are for the sole benefit of the Parties under this Settlement, and shall not be construed to confer any right or to avail any remedy to any other person.

H. Modification.

This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties in writing without Court approval if the Parties agree and cause exists for such modification. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

I. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

J. Fees and Costs. With the exception of fees and costs to be paid from the Settlement Amount, all Parties are to bear their own fees and costs.

K. Severability.

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, or not approved, such invalidity, illegality, unenforceability, or non-approval shall in no way affect any other provision if Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, unenforceable, or unapproved provision had never been included in this Agreement. If the Parties do not elect to proceed, the Parties shall be restored to their respective positions in the Litigation, as of the date of the hearing on the Motion for Preliminary Approval.

L. Agreement Binding on Successors

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

M. Fair, Adequate, and Reasonable Settlement.

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

1 APPROVED AS TO FORM AND CONTENT:

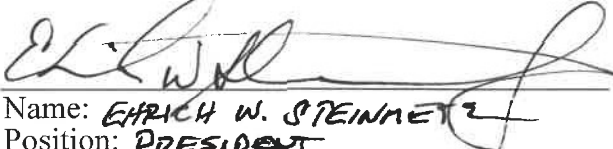
2 Date: 4/27/2022, 2022

DARRELL COLTER, on behalf of himself and
all others similarly situated

3
4 By:  DocuSigned by:
5 DARRELL COLTER, Plaintiff

6
7
8 Date: April 27, 2022

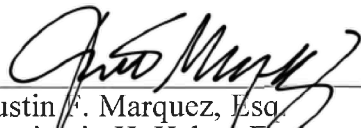
PROPULSION CONTROLS ENGINEERING,
LLC, Defendant

9
10 By: 
11 Name: EHRIK W. STEINMETZ
12 Position: PRESIDENT
For PROPULSION CONTROLS
ENGINEERING, LLC, Defendant

13 APPROVED AS TO FORM:

14
15 Date: April 28, 2022

WILSHIRE LAW FIRM

16
17 By: 
18 Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Attorneys for Plaintiff

19 Date: April 27, 2022

WILSON TURNER KOSMO LLP

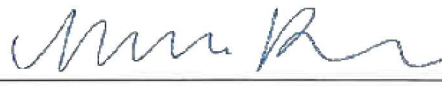
20
21 By: 
22 Lois M. Kosch
23 Nicole R. Roysdon
24 Attorneys for Defendant

Exhibit A

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
Colter v. Propulsion Controls Engineering
Case No. 37-2020-00030682

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX - XX -

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above-captioned class and PAGA representative action (“the Action”) filed in the San Diego County Superior Court has been reached by Propulsion Controls Engineering, LLC (“PCE” or “Defendant”) and Darrell Colter (“Plaintiff”), an individual, on behalf of himself and all others similarly situated and has been granted Preliminary Approval by the Court supervising the Action. The San Diego County Superior Court has ordered that this Notice be sent to you because you may be a Settlement Class Member. The purpose of this Notice is to inform you of the Settlement of this class and representative action and your legal rights under the Settlement as follows:

- PCE has agreed to settle a lawsuit brought on behalf of all persons who were employed by PCE in California and performed work for PCE in California as a non-exempt employee during the period from September 1, 2016 to January 19, 2022 (the “Settlement Period”) (hereafter, “Settlement Class”).
- The proposed Settlement resolves all alleged claims regarding the following wage and hour policies and/or practices of PCE: failure to pay minimum, regular, and overtime wages; failure to provide meal and rest breaks and any premiums thereon, failure to reimburse business expenses, wage statement violations, waiting time penalties, or other penalties of any kind arising from an alleged failure to pay wages. Finally, the settlement resolves claims for unfair competition and for civil penalties under California’s Private Attorney General Act (“PAGA”) arising out of the alleged wage and hour policies and practices of PCE. The settlement avoids costs and risks to you from continuing the lawsuit, pays money to employees, and releases PCE from liability for these claims.
- The parties in the lawsuit disagree on whether PCE is liable for the allegations raised in this case and how much money could have been won if the employees won at trial. PCE denies that it did anything wrong and believes that it paid you and other employees properly and fairly.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Get a Payment	If you are a member of the Settlement Class, you will automatically receive a payment if you do not exclude yourself. If you accept a payment and do not exclude yourself you will give up certain rights and claims as set forth on page 4 below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator as explained below.
Exclude Yourself	Get no payment. Send a letter to the Settlement Administrator to request exclusion as provided below. This is the only option that allows you to preserve and potentially bring your own claim against PCE about the legal claims in this case. The Settlement will bind all Settlement Class Members who do not request exclusion.
Object	Write to the Court about why you do not like the settlement. Remain a Settlement Class Member, receive a payment, and remain bound by the Settlement. Directions are provided below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains the terms and details of a proposed settlement of a class and representative action lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff filed this lawsuit in San Diego County Superior Court on behalf of the Settlement Class. The lawsuit alleges that members of the Settlement Class were not paid for or properly provided all meal and rest breaks, were not issued accurate wage statements, were not paid for all hours worked, were not paid properly paid minimum wage or overtime pay, were not paid all wages due at termination and/or resignation, were not reimbursed for business expenses, and were subjected to unfair business practices. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, and attorneys' fees and costs.

PCE denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit. PCE contends, among other things, that it complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable law. PCE further denies that the lawsuit is appropriate for class treatment for any purpose other than settling this lawsuit.

The Court has made no ruling and will make no ruling on the merits of the Litigation and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiff or PCE. Plaintiff thinks he would have prevailed on his claims at a trial. PCE does not think that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the class members will get compensation. Plaintiff and Plaintiff's attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all class members.

B. Who is in the Class?

The Settlement Class consists of all persons who were employed by PCE in California and performed work for PCE in California as a non-exempt employee during the Settlement Period.

C. What does the Settlement provide?

1. Settlement Amount.

PCE will pay a total of One Million Three Hundred and Seventy-Five Thousand Dollars and Zero Cents (\$1,375,000.00) (the “Settlement Amount”) to settle the lawsuit.

The following sums will be paid from the Settlement Amount: all Net Settlement Payments (less the employees’ portion of any required federal and state tax withholdings) to the Settlement Class, Attorneys’ Fees (not to exceed 33 ⅓ % of the Settlement Amount, or \$458,333.33.), Litigation Expenses not to exceed \$25,000.00, Settlement Administrative Costs estimated in an amount not to exceed \$15,000.00, the PAGA Settlement Payment in the amount of \$50,000.00 (75% of which will be paid to the California Labor and Workforce Development Agency (LWDA) and 25% of which will be paid to Aggrieved Employees, and an enhancement payment to the Named Plaintiff not to exceed \$10,000.00. Any and all Employer Taxes which PCE normally would be responsible for paying on the Net Settlement Payments made to individual Class Members will be paid by PCE separately and apart from the Settlement Amount.

The funds used for the Settlement Amount shall be paid to the Settlement Administrator. The Settlement Administrator shall disburse the Court-approved enhancement to the Named Plaintiff, Court-approved Attorneys’ Fees and Litigation Expenses, Settlement Administration Costs, and the PAGA Settlement at the same time and manner as the Net Settlement Payments to the Settlement Class members.

2. Net Settlement Amount

“Net Settlement Amount” means the Settlement Amount minus the Attorneys’ Fees, Litigation Expenses, Settlement Administrative Costs, the PAGA Settlement, and the enhancement payment to the Named Plaintiff.

3. Your Individual Payment Amount.

The Settlement Administrator will calculate the total number of workweeks for all Class Members who were employed by PCE during the Settlement Period based on their dates of employment during the Settlement Period (“Total Workweeks”). The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks worked by all Class Members who do not request exclusion, “opt out”, (as defined on pages 5-6 below) during the Settlement Period (“Workweek Point Value”).

An “Net Settlement Payment” for each Class Member will then be determined by multiplying a Class Member’s workweeks (“Eligible Workweeks”) by the Workweek Point Value. The Net Settlement Payment will be reduced by any required state and federal tax withholdings and deductions, for each participating Class Member.

Separately, the 25% of the PAGA Settlement that is paid to Aggrieved Employees (i.e., all persons who were employed by PCE in California and performed work for PCE in California as a non-exempt employee

from October 6, 2019 through January 19, 2022 (“PAGA Claim Period”)) will be distributed based on the number of Eligible Workweeks each Aggrieved Employee worked during the PAGA Claim Period.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to Settlement Class Members reflecting the payments each Settlement Class Member receives under the Settlement. For tax purposes, Net Settlement Payments will be allocated as follows: 10 % as wages, 45% as penalties, and 45% as interest. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code and the California Franchise Tax Board.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary state and federal tax withholdings and deductions will be taken out of the amounts attributable to unpaid wages.

Nothing in this Notice or the Settlement is intended to be tax advice. Settlement Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment and stay in the Class?

Upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in Section I(E) of the Stipulation of Settlement), Named Plaintiff, on behalf of himself and the State of California, and all members of the Settlement Class, including their heirs, agents, representatives, successors, assigns, and estates, except those that make a valid and timely request to be excluded from the Settlement Class and Settlement, shall be deemed to have fully, finally, and forever waived, released, discharged, and promised never to assert in any forum any and all claims, causes of action, demands, rights, and liability that were alleged in the Second Amended Complaint or which could have been alleged in the Second Amended Complaint based on the facts and allegations asserted therein arising during the Settlement Period against Defendant, and its parents, subsidiaries, affiliates, officers, shareholders, directors, agents, employees, attorneys, and insurers (“Released Parties”), including any claims for violation of the California Labor Code or any other state, local, or federal law, statute, regulation or ordinance imposing liability and/or obligations that could be brought based on the allegations in the Second Amended Complaint, through the Settlement Period, including the Fair Labor Standards Act (the “Released Claims”). This release specifically includes claims for any wages, statutory penalties, civil penalties, liquidated damages, interest, restitution, attorneys’ fees and costs for the following: 1) all claims, under any legal theory of liability, for the failure to pay overtime or double time wages owed pursuant to California Labor Code §§ 204, 510, 1194, and 1198, the IWC Wage Orders or any comparable federal statute under any theory of liability, including the Fair Labor Standards Act (FLSA); 2) all claims, under any legal theory of liability, for the failure to pay all wages of any kind, including any minimum wage or straight time wages, owed pursuant to California Labor Code §§ 204, 510, 1194, 1194.2, 1197, and 1198, the IWC Wage Orders, local minimum wage ordinances, or any comparable federal statute under any theory of liability, including the Fair Labor Standards Act (FLSA); 3) all claims, under any legal theory of liability, for failure to provide meal periods pursuant to California Labor Code §§ 226.7 and 512, and the IWC Wage Orders; 4) all claims, under any legal theory of liability, for the failure to provide rest periods pursuant to California Labor Code § 226.7 and the IWC Wage Orders; 5) all claims, under any legal theory of liability, for the failure to properly calculate any premiums owed and/or paid pursuant to California Labor Code § 226.7(b), and the IWC Wage Orders; 6) all claims, under any legal theory of liability, for failure to indemnify employees for expenditures pursuant to California Labor Code § 2802; 7) all claims, under any legal

theory of liability, for violation of Business & Professions Code §§ 17200, *et seq.*; 8) all claims, under any legal theory of liability, for any penalties of any kind arising from an alleged failure to pay final wages or other amounts allegedly owed to Class Members pursuant to California Labor Code §§ 201-203; 9) all claims, under any legal theory of liability, for any penalties of any kind arising from any alleged wage statement violations pursuant to California Labor Code §§ 226, 1174, and 1174.5; and 10-1) all claims, under any legal theory of liability, for civil penalties pursuant to PAGA (Labor Code §§ 2698 *et seq.*) for the various Labor Code violations alleged, including penalties pursuant to California Labor Code §§ 210, 226.3, 1174.5, 558, and 1197.1.

THE FINAL APPROVAL HEARING

The Court will conduct a Final Approval Hearing regarding the proposed settlement (the “Final Approval Hearing”) on [REDACTED], 2022, at 330 West Broadway, in Department C-74 of the San Diego County Superior Court. The Court will determine: (i) whether the Settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iii) the amount of the attorneys’ fees and costs awarded to Plaintiff’s counsel; (iv) the amount that approved for payment to the Settlement Administrator for the costs of administering the Settlement; and (v) the amount that should be awarded to the Plaintiff as an enhancement payment. At the Final Approval Hearing, the Court will hear any objections, as well as any arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself, as explained in more detail on page 7 below .

The Final Approval Hearing may be continued without further notice to the Class. You may contact Plaintiff’s counsel, listed in this Notice, to inquire into the date and time of the Final Approval Hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NOT REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE IN ORDER TO RECEIVE THIS PAYMENT.

The estimated pre-tax amount of your Settlement Payment is [REDACTED]. Required withholdings and deductions will be made from this amount. The amount of the Settlement Payment paid to each Settlement Class Member is based upon the number of workweeks worked as a non-exempt employee for PCE in California between September 1, 2016 and January 19, 2022. According to payroll records maintained by PCE, your number of Eligible Workweeks between September 1, 2016 and January 19, 2022 is _____.

If you believe that the number of Eligible Workweeks stated is incorrect, you may dispute the number of workweeks by preparing a statement setting forth the number of workweeks you believe in good faith is

correct, stating that you authorize the Settlement Administrator to request information from Defendant to determine such information, and attaching any relevant supporting documentation in support thereof, and mailing the signed and completed statement to the Settlement Administrator at _____ (Address) no later than _____ (45 days after the date of the mailing). Please be advised that your number of Eligible Workweeks is presumed to be correct, unless you submit a dispute and supporting documentation to the Settlement Administrator no later than [DATE], 2022. If you believe that the number of workweeks stated is correct, you do not have to do anything.

The Net Settlement Payment you will receive will be a full and final settlement of the Released Claims described in Section D above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any payment or benefits from the proposed Settlement. You will **not** be bound by a judgment in this case and you will have the right to file your own lawsuit against PCE, subject to time limits called statutes of limitations and other potential defenses that PCE may assert, and to pursue your own claims in a separate suit.

You can request exclusion or “opt out” of the Settlement Class by sending a letter to the Settlement Administrator at _____ (address) by first class U.S. mail which must: (1) state your name, address, and telephone number; (2) state that you wish to request exclusion from or opt-out of the Settlement; and (3) be signed and dated by you. To be valid, your request for exclusion must be postmarked no later than _____ [45 days after mailing].

Anyone who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Individuals who fail to submit a valid and timely request for exclusion on or before [DATE], 2022, are Class Members and will be bound by all terms of the Settlement and any final disposition entered in this Litigation if the Court approves the Settlement.

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you are a Class Member and would like to object to the Settlement, you should not submit a request for exclusion (*i.e.*, do not opt out).

If you submit both a request for exclusion and an objection, you will be excluded from the Settlement and Class, and your objection will not be considered.

To object to the Settlement in writing, you must complete, sign, and send a written notice of objection to the Settlement Administrator at _____ (Address), postmarked no later than _____ (45) days after the Notice was initially mailed to the Class Members, setting forth the grounds for the objection, along with all supporting documents, your name, address, telephone number and reference to this Litigation, along with whether you intend to appear at the final approval hearing, either personally or through an attorney.

You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

CHANGE OF ADDRESS

If you move after receiving this Notice, if it was misaddressed, or if for any reason you want your Net Settlement Payment or future correspondence concerning this Litigation to be sent to a different address, you must supply your preferred address to the Settlement Administrator at (Address). Otherwise, your Net Settlement Payment may not reach you. It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your settlement payment.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Stipulation of Settlement” which is available for viewing online on the following website: URL: [Insert website provided by Settlement Administrator].

In addition, you can view the Litigation’s records online by visiting the Court’s website <https://roa.sdcourt.ca.gov/roa/>, entering the Case Number in the search box, and selecting “Search.”

ANY INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF’S COUNSEL LISTED BELOW OR TO THE SETTLEMENT ADMINISTRATOR, [Administrator], [address] [telephone]. Please refer to the *Colter v. Propulsion Controls Engineering* Class Action Settlement.

PLAINTIFF’S/CLASS COUNSEL

Justin F. Marquez, Esq.

justin@wilshirelawfirm.com

Benjamin H. Haber, Esq.

benjamin@wilshirelawfirm.com

WILSHIRE LAW FIRM, PLC

3055 Wilshire Blvd., 12th Floor

Los Angeles, California 90010

Telephone: (213) 381-9988

Facsimile: (213) 381-9989

PROPULSION CONTROLS ENGINEERING WILL NOT RETALIATE AGAINST YOU FOR PARTICIPATING IN THIS SETTLEMENT.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.

Exhibit 2



CASE ASSUMPTIONS

Class Members	725
Opt Out Rate	1%
Opt Outs Received	7
Total Class Claimants	718
Subtotal Admin Only	\$10,175.00

WILL NOT EXCEED	\$10,175.00
For 725 Class Members	

November 2, 2021

Case: Colter v. Propulsion Controls Engineering Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
 Contact Number: 949.566.1455
 Email: Jodey@phoenixclassaction.com

Requesting Attorney: Justin Marquez
 Firm: Wilshire Law Firm, PLC
 Contact Number: (213) 381-9988, Ext. 345
 Email: justin@wilshirelawfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.
 Estimate is based on 725 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
	\$133.37	1	\$133.37
Call Center & Long Distance	\$2.50	73	\$181.25
NCOA (USPS)	\$0.30	550	\$165.00
Total			\$879.62

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Data Merge & Duplication Scrub	\$0.15	725	\$108.75
Notice Packet & Opt-Out Form	\$1.00	725	\$725.00
Estimated Postage (up to 2 oz.)*	\$0.70	725	\$507.50
Language Translation	\$950.00	1	\$950.00
Website	\$200.00	1	\$200.00
Total			\$2,691.25

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	3	\$150.00
Skip Tracing Undeliverables	\$2.00	145	\$290.00
Remail Notice Packets	\$2.00	145	\$290.00
Estimated Postage	\$0.70	145	\$101.50
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$931.50

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Non Opt-Out Processing	\$175.00	1	\$175.00
Case Associate	\$50.00	4	\$200.00
Opt-Outs/Deficiency/Dispute Letters	\$8.50	18	\$154.06
Case Manager	\$85.00	3	\$255.00
Total			\$1,034.06

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	2	\$250.00
Disbursement Review	\$125.00	2	\$250.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks, W2 and 1099 *	\$1.50	718	\$1,076.63
Estimated Postage Checks, W2 and 1099	\$0.56	718	\$401.94
Total			\$2,643.57

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	20	\$30.00
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	2	\$170.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	1	\$115.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$1,000.00	1	\$1,000.00
Total			\$1,995.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total:	\$10,175.00
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PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

Darrel Colter v. Propulsion Controls Engineering
Case No.: 37-2020-00030682

PROOF OF SERVICE