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

NEIL FRASER and CODY LAMONT,
individually, and on behalf of themselves and
others similarly situated,

Plaintiff,

v.

VALLEY POWER SYSTEMS, INC., a
California corporation, VALLEY POWER
SYSTEMS NORTH, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 20STCV00279

CLASS ACTION

Assigned for All Purposes To:
Hon. Carolyn B. Kuhl
Dept.: 12

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: January 6, 2020
Trial Date: None Set

1 This Joint Stipulation of Class Action Settlement (“Settlement Agreement”) is made and
2 entered into by and between Plaintiffs Neil Fraser and Cody Lamont (“Class Representatives”),
3 individually, and on behalf of all others similarly situated, and Defendants Valley Power Systems,
4 Inc., a California corporation, and Valley Power Systems North, Inc., a California corporation
5 (collectively “Defendants”) (collectively with Plaintiffs, the “Parties”).

6 DEFINITIONS

7 The following definitions are applicable to this Settlement Agreement.

8 Definitions contained elsewhere in this Settlement Agreement will also be effective:

9 1. “Action” means *Neil Fraser, et al., v Valley Power Systems, Inc., et al.*, Los
10 Angeles County Superior Court Case No. 20STCV00279.

11 2. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
12 Court for Class Counsel’s litigation and resolution of this Action.

13 3. “Class Counsel” means Douglas Han, Shunt Tatavos-Gharajeh, and Jason
14 Rothman of Justice Law Corporation.

15 4. “Class List” means a complete list of all Class Members that Defendants will
16 diligently and in good faith compile from its records and provide to the Settlement
17 Administrator within twenty-one (21) calendar days after Preliminary Approval of this
18 Settlement. The Class List will be formatted in Microsoft Office Excel and will include the
19 following information from Defendants’ records: each Class Member’s full name; last-known
20 mailing address; Social Security number; and respective number of Workweeks and/or dates of
21 employment as a non-exempt employee in California during the Class Period.

22 5. “Settlement Class” or “Class Member” means all current and former
23 California-based (*i.e.*, currently “residing” in California with the intent to remain in
24 California indefinitely) hourly-paid or non-exempt employees (whether hired directly or
25 through a staffing agency or labor contractor) of Defendants within the State of California.
26 “Class Members” shall not include any person who submits a timely and valid request for
27 exclusion.
28

6. Defendants estimates that there are approximately Five Hundred and Twenty (520) combined Class Members and PAGA Members

7. “Settlement PAGA Members” or “PAGA Member” means all current and former California-based (*i.e.*, currently “residing” in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees (whether hired directly or through a staffing agency or labor contractor) of Defendants within the State of California.

8. “Class Period” means the period from January 6, 2016 through May 2, 2022.

9. “PAGA Period” means the period from January 6, 2019 through May 2, 2022.

10. “Class Representatives’ Enhancement Payment” means the amount approved by the Court to be paid to Plaintiffs in recognition for their contributions to the Action on behalf of Class Members and PAGA Members.

11. “Court” means the Superior Court of California, County of Los Angeles.

12. “Defendants” means Valley Power Systems, Inc., a California corporation, and Valley Power Systems North, Inc., a California corporation (including any and all affiliates, subsidiaries, and parents, and their shareholders, officers, directors, agents, and employees).

13. “Effective Date” will be the last to occur of the following: (a) the 61st day after service of notice of entry of the Court’s order granting final approval of the Settlement Agreement and Judgment; or (b) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review.

14. “Individual Settlement Payment” means each Class Member’s share of the Net Settlement Amount.

15. “Maximum Settlement Amount” is the amount of Two Million Dollars and Zero Cents (\$2,000,000.00), which is the maximum amount to be paid by Defendants pursuant to this Settlement Agreement. The Maximum Settlement Amount includes all Individual Settlement Payments to Class Members and PAGA Members, the Class Representatives Enhancement Payments to Plaintiffs’, Attorneys’ Fees and Costs to Class Counsel, the Settlement Administration Costs to the Settlement Administrator, the Class Members’ share of

1 any employment taxes, and the PAGA Payment as specified in this Agreement. Defendants
2 shall pay the employer's share of payroll taxes due on the portion of Settlement Payments
3 allocated to wages separately and in addition to the Maximum Settlement Amount. The Parties
4 agree that Defendants will have no obligation to pay any amount in connection with this
5 Settlement Agreement apart from the Maximum Settlement Amount and the employer's share
6 of payroll taxes due on the portion of Settlement Payments allocated to wages, and that none of
7 the Maximum Settlement Amount will revert to Defendants.

8 16. "Net Settlement Amount" means the Maximum Settlement Amount, less the
9 Class Representatives Enhancement Payments, Attorneys' Fees and Costs, the Class Members'
10 share of any employment taxes, Settlement Administration Costs, and seventy-five percent
11 (75%) of the PAGA Payment as specified in this Agreement.

12 17. "Objection" means any written objection to this Settlement filed with the Court
13 and sent by a Class Member to the Settlement Administrator as specified herein and in the
14 Notice of Settlement. An Objection to Settlement must be filed and sent to the Settlement
15 Administrator within the time limitations set forth in this Stipulation.

16 18. "Notice of Class Action Settlement" means the notice of settlement, a draft of
17 which is attached as Exhibit A, to be mailed to all members of the Settlement Class upon
18 Preliminary Approval.

19 19. "PAGA" means the California Labor Code Private Attorneys General Act of
20 2004, Cal. Labor Code Section 2699, et. seq.

21 20. "PAGA Payment" means the payment made hereunder to the California Labor
22 and Workforce Development Agency and the Settlement PAGA Members for settlement of
23 claims for civil penalties under PAGA.

24 21. "Parties" means Plaintiffs and Defendants collectively.

25 22. "Plaintiffs" mean Neil Fraser and Cody Lamont.

26 23. "Preliminary Approval" means the Court order granting preliminary approval of
27 the Settlement Agreement.

1 24. “Released Claims” means all causes of action and factual or legal theories that
2 were alleged in the operative first amended complaint or that could have been alleged against
3 Defendants based on the facts contained in the operative complaints, including all of the
4 following claims for relief: (a) failure to pay all wages, including but not limited to regular
5 wages, minimum wages and overtime wages due; (b) failure to provide proper meal and rest
6 periods, and to properly provide premium pay in lieu thereof; (c) failure to provide complete,
7 accurate or properly formatted wage statements; (d) waiting time penalties; (e) failure to
8 reimburse business expenditures, (f) unfair business practices that could have been premised on
9 the claims, causes of action or legal theories of relief described above or any of the claims,
10 causes of action or legal theories of relief pleaded in the operative complaint; (g) any other
11 claims or penalties under the California Labor Code or other wage and hour laws pleaded in the
12 Action, including but not limited to California Labor Code Sections 201, 201.3, 201.5, 201.6,
13 201.8, 201.9, 202, 203, 204, 205.5, 218.5, 221, 226, 226(a), 226(g), 226.3, 226.7, 510, 512(a),
14 558, 1174(d), 1021.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and, the California
15 Business and Professions Code Section 17200; (h) all damages, penalties, interest and other
16 amounts recoverable under said claims, causes of action or legal theories of relief, and,
17 exclusively to PAGA Members, (i) all claims under the California Labor Code Private
18 Attorneys General Act of 2004 that could have been premised on the facts, claims, causes of
19 action or legal theories described above or any of the claims, the letter to the LWDA dated
20 November 20, 2020, and causes of action or legal theories of relief pleaded in the operative
21 complaints.

22 25. “Released Parties” means Defendants, and their past, present and/or future,
23 direct and/or indirect, owners, officers, directors, members, managers, employees, agents,
24 representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent
25 companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, legal
26 representatives, and joint venturers, if any.

27 26. “Request for Exclusion” means a timely written request by a Class Member to
28 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,

1 address, and telephone number of the Class Member requesting exclusion; (ii) be signed by the
2 Class Member; (iii) be returned to the Settlement Administrator; (iv) clearly state that the Class
3 Member does not wish to be included in the Settlement; and (v) be postmarked on or before the
4 Response Deadline.

5 27. "Response Deadline" means the deadline by which Class Members must
6 postmark the Settlement Administrator Requests for Exclusion or Objection to the Settlement.
7 The Response Deadline will be forty-five (45) calendar days from the date of the initial mailing
8 of the Notice of Class Action Settlement by the Settlement Administrator, unless the 45th day
9 falls on a Sunday, State or Federal holiday, in which case the Response Deadline will be
10 extended to the next day on which the U.S. Postal Service is open.

11 28. "Settlement Administrator" means CPT Group, or any other third-party class
12 action settlement administrator approved by the Parties and the Court for the purposes of
13 administering this Settlement. The Parties each represent that they have no financial interest in
14 the Settlement Administrator or otherwise have a relationship with the Settlement
15 Administrator that could create a conflict of interest.

16 29. "Settlement Administration Costs" includes all costs payable to the Settlement
17 Administrator for administering this Settlement, including, but not limited to, printing,
18 distributing, and tracking notice and other documents for this Settlement, tax reporting,
19 distributing all payments to be made pursuant to this Settlement, and providing necessary
20 reports and declarations, as requested by the Parties. After conference and consultation with the
21 Settlement Administrator, \$11,000.00 will be allocated to Settlement Administration as a "not
22 to exceed" cost.

23 30. "Pay Periods" means the number of pay periods that the Class Member worked
24 as a non-exempt employee in California during the Class Period.

25 31. "Workweek Value" means the value of each compensable Workweek, as
26 determined by the formula set forth in herein.

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28 ///

TERMS OF AGREEMENT

Plaintiffs, on behalf of themselves, the Settlement Class, the Settlement PAGA Members, and Defendants agrees as follows:

32. Funding of the Maximum Settlement Amount. Defendants will make two separate installment payments, each in the amount of \$1,000,000.00, to an interest-bearing Qualified Settlement Fund, which the Settlement Administrator will manage and establish. The two payments shall be made on the following schedule:

- First Installment: January 2, 2023; and
- Second Installment: January 2, 2024

By January 3, 2024, the Qualified Settlement Fund will be fully funded by Defendants. The Maximum Settlement Amount will be used to pay: (i) Individual Settlement Amounts; (ii) the Class Representative Enhancement Payment; (iii) Attorneys' Fees and Costs; (iv) the PAGA Payment; and the (v) Settlement Administration Costs.

33. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees and Costs of not more than Seven Hundred Thousand Dollars and Zero Cents (\$700,000.00) in attorney's fees and not more than Forty Thousand Dollars and Zero Cents (\$40,000.00) in costs, and Defendants agree not to oppose such application. All Attorneys' Fees and Costs will be paid from the Maximum Settlement Amount. The amounts awarded by the Court shall be binding on the Parties and shall not otherwise affect the validity of the Settlement. Plaintiffs and Class Counsel will not have the right to revoke this Settlement in the event the Court fails to approve the amount of Attorneys' Fees and Costs sought by Class Counsel. Should the Court approve a lesser amount of Attorneys' Fees and Costs, the difference will be added to the Net Settlement Amount.

34. Class Representative Enhancement Payment. Plaintiffs will apply to the Court for a Class Representative Enhancement Payment of not more than Ten Thousand Dollars and Zero Cents (\$10,000.00) to each, Plaintiffs Neil Fraser and Cody Lamont, for a combined total of \$20,000.00. This amount is for their efforts and work in prosecuting the Action on behalf of Class Members and PAGA Members in exchange for a general release of all claims, and

1 Defendants agree not to oppose such application. This amount shall be reported as W-2 wages.
2 The Class Representative Enhancement Payment, which will be paid from the Maximum
3 Settlement Amount, will be in addition to Plaintiffs' right to Individual Settlement Payments
4 pursuant to the Settlement. Plaintiffs will be solely and legally responsible to pay any and all
5 applicable taxes on the payments made pursuant to this paragraph and will hold Defendants
6 harmless from any claim or liability for taxes, penalties, or interest arising as a result of the
7 payments. Plaintiffs will not have the right to revoke this Settlement in the event the Court fails
8 to approve the amount sought by Plaintiffs as a Class Representative Enhancement Payment.
9 Any portion of the Class Representative Enhancement Payment not awarded to the Class
10 Representatives will be added to the Net Settlement Amount.

11 35. Settlement Administration Costs. The Settlement Administrator will be paid for
12 the reasonable costs of administration of the Settlement and distribution of payments. These
13 costs, which will be paid from the Maximum Settlement Amount, will include, *inter alia*, the
14 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
15 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
16 payments to be made pursuant to the Settlement, and providing necessary reports and
17 declarations. Class Counsel has obtained a "not to exceed" quote from the Settlement
18 Administrator to complete the administration for \$11,000.00. The Settlement Administrator's
19 "not to exceed" quote will represent the Settlement Administrator's agreement that, based on
20 the class size and distributions under the terms of this Settlement, the costs for administration
21 of the terms of this Settlement will not exceed the specified amount. All of the Settlement
22 Administration Costs shall be paid from the Maximum Settlement Amount, upon completion of
23 all duties required to be performed by the Settlement Administrator under the terms of this
24 Settlement, or as otherwise required by the Court. The Settlement Administrator will establish
25 the Qualified Settlement Fund Account.

26 36. PAGA Payment. One Hundred Thousand Dollars and Zero Cents
27 (\$100,000.00) shall be allocated from the Maximum Settlement Fund for settlement of claims
28 for civil penalties under PAGA. The Settlement Administrator shall pay seventy-five percent

(75%) of the \$100,000.00 PAGA Payment, or \$75,000.00, to the LWDA, and twenty-five (25%) of the \$100,000.00 PAGA Payment, or \$25,000.00, will be included in the Net Settlement Amount and distributed to Settlement PAGA Members as described in this Agreement. Each Settlement PAGA Member's pro rata share of that \$25,000.00 will be part of his or her Individual Settlement Payment.

37. Individual Class Members Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period as a non-exempt employee in California. Specific calculations of Individual Settlement Payments will be made as follows:

37(a). The Settlement Administrator will calculate the total number of Workweeks worked by each Class Member as a non-exempt employee in California during the Class Period and the aggregate total number of Workweeks worked by all Class Members as non-exempt employees in California during the Class Period.

37(b). To determine each Class Member's estimated "Individual Settlement Payment," the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value.

37(c). The entire Net Settlement Amount will be disbursed as Individual Settlement Payments to Class Members. If there are any valid and timely Requests for Exclusion from members of the Settlement Class, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Class Member according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

38. Individual PAGA Member Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the PAGA Payment amount

1 based on the number of Pay Periods a PAGA Member worked during the PAGA Period as a
2 non-exempt employee in California. Specific calculations of PAGA Individual Settlement
3 Payments will be made as follows:

4 38(a). The Settlement Administrator will calculate the total number of Pay
5 Periods worked by each PAGA Member as a non-exempt employee in California during the
6 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
7 non-exempt employees in California during the PAGA Period (“Pay Period Value”).

8 38(b). To determine each PAGA Member’s estimated “Individual Settlement
9 Payment,” the Settlement Administrator will use the following formula: The PAGA Payment
10 amount’s portion allocated to the PAGA Period will be divided by the aggregate total number of
11 Pay Periods within the PAGA Period, resulting in the Pay Period Value. Each PAGA Member’s
12 “Individual Settlement Payment” will be calculated by multiplying each individual PAGA
13 Member’s total number of Pay Periods by the Pay Period Value.

14 38(c). The entire PAGA Payment amount will be disbursed as Individual
15 Settlement Payments to PAGA Members. PAGA Members will not be able to opt out or request
16 exclusion from the settlement. For those Class Members who are also PAGA Members, they
17 will not be able to opt out or request exclusion from their Individual Settlement Amount
18 allocation of the PAGA Amount.

19 39. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
20 Class Members and PAGA Members under this Settlement, as well as any other payments made
21 pursuant to this Settlement, will not be utilized to calculate any additional benefits under any
22 benefit plans to which any Class Members and/or PAGA Members may be eligible, including,
23 but not limited to: (i) profit-sharing plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock
24 purchase plans, (v) vacation plans, (vi) sick leave plans, (vii) PTO plans, and (viii) any other
25 benefit plan. Rather, it is the Parties’ intention that this Settlement Agreement will not affect
26 any rights, contributions, or amounts to which any Class Members and/or PAGA Members may
27 be entitled under any benefit plans.
28

1 40. Settlement Administration Process. The Parties agree to cooperate in the
2 administration of the settlement and to make all reasonable efforts to control and minimize the
3 costs and expenses incurred in administration of the Settlement.

4 41. Delivery of the Class List. Within twenty-one (21) calendar days of entry of the
5 Court's Order Granting Preliminary Approval, Defendants will provide the Class List to the
6 Settlement Administrator. This Class List will also be used to identify the PAGA Members
7 within the PAGA Period. In no event will this information ever be shared with or provided to
8 Class Counsel.

9 42. Notice by First-Class U.S. Mail. Within ten (10) business days after receiving
10 the Class List from Defendants, the Settlement Administrator will mail a Notice of Class Action
11 Settlement to all Class Members via regular First-Class U.S. Mail, using the most current,
12 known mailing addresses identified in the Class List.

13 43. Confirmation of Contact Information in the Class List and Undeliverable
14 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
15 National Change of Address Database for information to update and correct for any known or
16 identifiable address changes. Any Notices of Class Action Settlement returned to the Settlement
17 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via
18 regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement
19 Administrator will indicate the date of such re-mailing on the Notice of Class Action
20 Settlement. If no forwarding address is provided, the Settlement Administrator will promptly
21 attempt to determine the correct address using an Accurant search/skip-trace and will then
22 perform a single re-mailing.

23 44. Notices of Class Action Settlement. All Class Members will be mailed a Notice
24 of Class Action Settlement in both English and Spanish in the form attached as Exhibit A¹, as
25 may be modified by Court order.

27 ¹ Only the English version of the Class Notice is being attached to the Stipulation of Class Action Settlement. Once
28 the above-entitled case receives Preliminary Approval then the Claim Administrator will translate the Class Notice
into Spanish.

1 45. Disputed Information on Notices of Class Action Settlement. Class Members
2 will have an opportunity to dispute the information provided in their Notices of Class Action
3 Settlement. To the extent Class Members dispute their Individual Settlement Payment, their
4 employment dates, or the number of Workweeks as set forth on the Notice, Class Members may
5 produce evidence to the Settlement Administrator showing that such information is inaccurate.
6 The Settlement Administrator will advise the Parties of such dispute, allow Defendants five (5)
7 business days to respond with any additional information or records, and then decide the
8 dispute. Defendants' records will be presumed determinative, absent evidence to rebut
9 Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by
10 the Class Member and Defendants and will make the final decision as to the merits of the
11 dispute. If necessary, Class Counsel, with the prior consent of Defendant, will be allowed to
12 access the class contact information for those individuals who dispute the information on the
13 Class Notice, in order to answer those individual Class Member's questions or otherwise
14 provide representations about the class.

15 45(a). Eligible PAGA Members will not be able to exclude themselves from
16 receiving their portion of the PAGA Payment. The Class Notice will inform Eligible PAGA
17 Members that they cannot opt out of the PAGA portion of the settlement and explain that they
18 will not be permitted to pursue any action under PAGA against the Released Parties for any
19 claim that arose during the PAGA Period, even if they elect to Opt-Out of the Class Action
20 Settlement.

21 46. Requests for Exclusion. Any Class Member wishing to opt-out from the
22 settlement of the Class Claims must sign and postmark a written Request for Exclusion to the
23 Settlement Administrator within the Response Deadline. The postmark date will be the
24 exclusive means to determine whether a Request for Exclusion has been timely submitted. The
25 Parties and their counsel will not solicit or encourage any Class Member, directly or indirectly,
26 to opt out of the Settlement Agreement. More specifically, a Class Member may request to be
27 excluded from the settlement of the Class Claims, and any payment of amounts under this
28 Agreement excluding the PAGA Payment by timely mailing a Request for Exclusion letter to

1 the Settlement Administrator stating that the Class Member wants to be excluded from
2 settlement of the Class Claims. This letter must include the Class Member's name, address,
3 telephone number, and signature. To be valid and timely, the Request for Exclusion must be
4 postmarked by the Response Deadline date that will be specified in the Class Notice (no less
5 than forty-five (45) days from the initial mailing of the Class Notice by the Settlement
6 Administrator). However, if a Notice of Class Action Settlement needs to be re-mailed then that
7 individual Class Member will be provided forty-five (45) days to object or submit a Request for
8 Exclusion from the settlement from the date of the new mailing. A Class Member who
9 properly submits a valid and timely Request for Exclusion from the Action will not receive any
10 payment of the Class Claims in connection with this Agreement or this Action, will not be
11 bound by or receive any benefit of this Agreement other than the PAGA Payment, and will have
12 no standing to object to the Settlement of the Class Claims. Class Members who do not timely
13 submit a Request for Exclusion will be bound by the releases herein and receive an individual
14 settlement payment ("Participating Class Members"). A Request for Exclusion must be mailed
15 to the Settlement Administrator at its address to be provided in the Class Notice, and the
16 Settlement Administrator will promptly transmit the Requests for Exclusion to counsel for the
17 Parties.

18 47. Defective Submissions. If a Class Member's Request for Exclusion is defective
19 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
20 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
21 (3) business days of receiving the defective submission to advise the Class Member that his or
22 her submission is defective and that the defect must be cured to render the Request for
23 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
24 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
25 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked and
26 mailed within that period, it will be deemed untimely.

27 48. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
28 Member who does not affirmatively opt out of the Settlement Agreement by submitting a

1 timely and valid Request for Exclusion will be bound by all of its terms, including those
2 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
3 it grants final approval of the Settlement. If a PAGA Member submits a valid Request for
4 Exclusion from the Class Claims, such PAGA Member will still be deemed to have released the
5 PAGA Claims to the fullest extent permitted by law.

6 49. Objection Procedures. The Notice shall state that Settlement Class Members
7 who wish to object to the Settlement may do so by a written statement of objection (“Notice of
8 Objection”) mailed by the Response Deadline to the Settlement Administrator or by appearing
9 at the hearing for Final Approval. If a Settlement Class Members wishes to submit a written
10 objection, the Objection must be signed by the Class Member and contain all information
11 required by this Settlement Agreement. The postmark date of the filing and service will be
12 deemed the exclusive means for determining that the Objection is timely. The Notice of
13 Objection must state: (1) the case name and number; (2) the name of the Settlement Class
14 Member; (3) the address of the Settlement Class Member; and (4) the basis for the objection.
15 The Settlement Class Member may appear at the Final Approval Hearing even if he does not
16 submit a Notice of Objection and may object orally. The Settlement Administrator will
17 promptly provide any Notices of Objection to the Parties’ counsel upon receiving them. Class
18 Counsel will include all objections received and Plaintiffs’ response(s) with Plaintiffs’ motion
19 for final approval of the Settlement. Settlement Class Members may also have a right to have
20 their objections heard at the Final Approval/Settlement Fairness Hearing, however they will
21 need to adhere to the Court’s COVID-19 protocols which will be outlined in the Class Notice
22 attached hereto as Exhibit A. Class Counsel will not represent any Class Members with respect
23 to any such Objections to this Settlement, and any Class Members who request exclusion from
24 the Settlement will have no standing to object to the settlement of the Class Claims.

25 50. Settlement Administrator Reports. The Settlement Administrator will provide
26 Defendants’ counsel and Class Counsel a weekly report of the number of Class Members who
27 have submitted valid Requests for Exclusion, Objections, and disputes regarding Pay Periods
28 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties

1 any updated reports regarding the administration of the Settlement Agreement as needed or
2 requested.

3 51. Distribution and Timing of Payments. After the Effective Date, and after
4 Defendants have fully funded the Qualified Settlement Fund with the Maximum Settlement
5 Amount, within thirty (30) days the Settlement Administrator will issue payments to: (i) all
6 Class Members who have not submitted a valid and timely Request for Exclusion, including
7 any Class Member whose notice was returned as undeliverable; (ii) all PAGA Members, (iii)
8 Plaintiff; (iv) Class Counsel; and (iv) the LWDA. The Settlement Administrator will also issue
9 a payment to itself for Court-approved services performed in connection with the Settlement.
10 The Settlement Administrator will pay Individual Settlement Payments from the Net Settlement
11 Amount to all Participating Class Members and PAGA Members. The Settlement Administrator
12 will do so by sending a check in the appropriate amount to the Class Member and/or PAGA
13 Member at the address indicated in the list of Class Member names and addresses provided by
14 Defendants, or as subsequently determined by the Settlement Administrator to be correct.
15 Those Class Members who are also PAGA Members will receive two checks, one for their
16 Class Member share and a separate check for their PAGA Member share.

17 52. Un-Cashed Settlement Checks. Class Members and PAGA Members will
18 receive checks for their respective Individual Settlement Payments. Checks will remain
19 negotiable for 180 days ("Check-Cashing Deadline"). Any check not cashed within 180
20 calendar days will be void. The funds from the uncashed checks shall be distributed by the
21 Settlement Administrator to the State Controller's Unclaimed Property Fund.

22 Any costs associated with administering the remaining funds under this section (e.g.,
23 bank stop-payment charges, settlement administration costs associated with any reserve
24 amount) or payments to the State Controller's Unclaimed Property Fund will be deducted
25 before the deposit into the State Controller's Unclaimed Property Fund.

26 53. Certification of Completion. Upon completion of administration of the
27 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
28 such completion to the Court and counsel for all Parties.

1 54. Allocation of Individual Settlement Payments. All Individual Settlement
2 Payments will be allocated as follows: (a) 20% as wages and (b) 80% as penalties and interests.
3 The Settlement Administrator will be responsible for issuing to each claimant a form W-2 for
4 amounts deemed “wages” and an IRS Form 1099 for the portions allocated to penalties.

5 55. Administration of Taxes by the Settlement Administrator. The Settlement
6 Administrator will be responsible for issuing to Plaintiffs, Class Members, PAGA Members,
7 and Class Counsel tax forms as may be required by law for all amounts paid pursuant to this
8 Settlement. The Settlement Administrator will also be responsible for forwarding all taxes and
9 penalties to the appropriate government authorities as may be required by law.

10 56. Tax Liability. Defendants makes no representation as to the tax treatment or
11 legal effect of the payments called for hereunder, and Plaintiffs, Class Members, and PAGA
12 Members are not relying on any statement, representation, or calculation by Defendants or by
13 the Settlement Administrator in this regard. Plaintiffs, Class Members, and PAGA Members
14 understand and agree that they will be solely responsible for the payment of any taxes and
15 penalties assessed on the payments described herein and will defend, indemnify, and hold
16 Defendants free and harmless from and against any claims resulting from treatment of such
17 payments as non-taxable damages.

18 57. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
19 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
20 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
21 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
22 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
23 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
24 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
25 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
26 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
27 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
28 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX

1 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
2 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
3 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
4 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
5 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
6 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
7 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
8 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
9 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
10 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
11 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
12 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
13 AGREEMENT.

14 58. No Prior Assignments. The Parties and their counsel represent, covenant, and
15 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
16 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
17 demand, action, cause of action or right herein released and discharged.

18 59. Nullification of Settlement Agreement. In the event that: (i) the Court does not
19 finally approve the Settlement as provided herein; (ii) the Court's final approval of the
20 Settlement is reversed or materially modified on appeal; or (iii) the Settlement does not become
21 final for any other reason, then this Settlement Agreement, and any documents generated to
22 bring it into effect, will be null and void, and the Parties will be deemed to be in the same
23 positions as if no settlement in principle had been reached with no waiver of any arguments or
24 defenses. Any order or judgment entered by the Court in furtherance of this Settlement
25 Agreement will likewise be treated as void from the beginning.

26 60. Preliminary Approval Hearing. Plaintiffs will obtain a date for hearing before
27 the Court to request the Preliminary Approval of the Settlement Agreement, and the entry of a
28 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for

1 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
2 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
3 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
4 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit
5 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
6 proposed Notice of Class Action Settlement.

7 61. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
8 the deadlines to postmark Requests for Exclusion and/or Objections to the Settlement
9 Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
10 be conducted to determine the Final Approval of the Settlement Agreement along with the
11 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representatives
12 Enhancement Payment; (iii) Attorneys' Fees and Costs; (iv) all Settlement Administration
13 Costs; and (v) the Class Members' and Defendants' share of any employment taxes. The Final
14 Approval/Settlement Fairness Hearing will be held no earlier than the date when all deadlines
15 for Class Members to object or exclude themselves have elapsed. Class Counsel will be
16 responsible for drafting all documents necessary to obtain final approval. Class Counsel will
17 also be responsible for drafting the attorneys' fees and costs application to be heard at the final
18 approval hearing.

19 62. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
20 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
21 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
22 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
23 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
24 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
25 Agreement.

26 63. General Release by Plaintiffs'. In exchange for the consideration set forth in
27 this Agreement, Plaintiffs, for themselves, their heirs, successors and assigns, do waive, release,
28 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,

1 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
2 which exist or may exist on Plaintiffs' behalf as of the date of this Agreement, including but not
3 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
4 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
5 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
6 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
7 state or other governmental statute, law, regulation or ordinance, including any claims arising
8 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
9 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
10 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
11 (ADEA), the Equal Pay Act, the Employee Retirement Income Security Act, Title VII of the
12 Civil Rights Act of 1964, the California Family Rights Act, the Family and Medical Leave Act,
13 the Fair Labor Standards Act (to the maximum extent permitted by law), California's
14 Whistleblower Protection Act, California Business & Professions Code Section 17200 et seq.,
15 and any and all claims arising under any federal, state or other governmental statute, law,
16 regulation or ordinance. Plaintiffs hereby expressly waives and relinquish any and all claims,
17 rights or benefits that they may have under California Civil Code § 1542, which provides as
18 follows:

19
20 **A GENERAL RELEASE DOES NOT EXTEND TO**
21 **CLAIMS THAT THE CREDITOR OR RELEASING**
22 **PARTY DOES NOT KNOW OR SUSPECT TO**
23 **EXIST IN HIS OR HER FAVOR AT THE TIME OF**
24 **EXECUTING THE RELEASE, AND THAT, IF**
25 **KNOWN BY HIM OR HER, WOULD HAVE**
26 **MATERIALLY AFFECTED HIS OR HER**
27 **SETTLEMENT WITH THE DEBTOR OR**
28 **RELEASED PARTY.**

25 Plaintiffs may hereafter discover claims or facts in addition to, or different from, those
26 which they now know or believe to exist, but they expressly agree to fully, finally and forever
27 settle and release any and all claims against the Released Parties, known or unknown, suspected
28 or unsuspected, which exist or may exist against any Released Party at the time of execution of

1 this Agreement, including, but not limited to, any and all claims relating to or arising from
2 Plaintiffs' employment with Defendants. The Parties further acknowledge, understand and
3 agree that this representation and commitment is essential to the Agreement and that this
4 Agreement would not have been entered into were it not for this representation and
5 commitment.

6 64. Release by All Settlement Class Members. Plaintiffs and all Class Members
7 who do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his
8 or her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully
9 and finally release and discharge the Released Parties from any and all of the Released Claims
10 for the entirety of the Class Period. This waiver and release will be final and binding on the
11 date in which Defendants fully funds the settlement, and will have every preclusive effect
12 permitted by law. Plaintiffs and the Settlement Class Members may hereafter discover facts or
13 legal arguments in addition to or different from those they now know or currently believe to be
14 true with respect to the Released Claims. Regardless, the discovery of new facts or legal
15 arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of
16 this Agreement, Plaintiffs and the Settlement Class Members shall be deemed to have, and by
17 operation of the final judgment approved by the Court, shall have, fully, finally, and forever
18 settled and released all of the Released Claims. The Parties understand and specifically agree
19 that the scope of the release described in this Paragraph: (i) is a material part of the
20 consideration for this Agreement; (ii) was critical in justifying the agreed upon economic value
21 of this settlement and without it Defendants would not have agreed to the consideration
22 provided; and (iii) is narrowly drafted and necessary to ensure that Defendants is obtaining
23 peace of mind regarding the resolution of claims that were or could have been alleged based on
24 the facts, causes of action, and legal theories contained in the operative complaint in the Action.

25 65. Release by All Settlement PAGA Members: Plaintiffs agree that upon
26 Defendants fully funding the settlement agreement, Plaintiffs and the PAGA Members will
27 release any and all PAGA Released Claims against Defendants that arose during the PAGA
28 Period. Upon Defendants fully funding the settlement agreement, Plaintiffs and the PAGA

1 Members will be forever barred from pursuing any and all of the PAGA Released Claims that
2 arose during the PAGA Period against Defendants.

3 66. Exhibits Incorporated by Reference. The terms of this Settlement Agreement
4 include the terms set forth in any attached Exhibits, which are incorporated by reference as
5 though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of
6 the Settlement.

7 67. Publicity Agreement. Plaintiffs and Class Counsel agree not to disclose or
8 publicize the Settlement, including the fact of the Settlement, its terms or contents, and the
9 negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any
10 person or entity, except potential class members and as shall be contractually required to
11 effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiffs
12 and Class Counsel agree not to issue press releases, communicate with, or respond to any
13 media or publication entities, publish information in manner or form, whether printed or
14 electronic, on any medium or otherwise communicate, whether by print, video, recording or
15 any other medium, with any person or entity concerning the Settlement, including the fact of
16 the Settlement, its terms or contents and the negotiations underlying the Settlement, except as
17 shall be contractually required to effectuate the terms of the Settlement. However, for the
18 limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions
19 for the limited purpose of showing to the court that the case has settled, Class Counsel may
20 disclose the name of the Parties in this action and the venue/case number of this action (but not
21 any other settlement details) for such purposes. The Parties and their counsel agree that they
22 will not engage in any advertising or distribute any marketing materials specifying any material
23 terms relating to the Settlement, including but not limited to any postings on any websites
24 maintained by Class Counsel.

25 68. No Unalleged Claims. Plaintiffs and Class Counsel represent that they are not
26 currently aware of any: (a) unalleged claims in addition to, or different from, those which are
27 finally and forever settled and released against the Released Parties by this Settlement; and (b)
28 unalleged facts or legal theories upon which any claims or causes of action could be brought

1 against Defendants, except such facts and theories specifically alleged in the operative
2 complaints in this Action. Plaintiffs and Class Counsel will further represent that, other than the
3 instant Action, they have no current intention of asserting any other claims against Defendants
4 in any judicial or administrative forum and do not currently know of or represent any persons
5 who have expressed any interest in pursuing litigation or seeking any recovery against
6 Defendants. The Parties acknowledge, understand and agree that the representations described
7 in this paragraph are essential to the Settlement Agreement and that this Settlement Agreement
8 would not have been entered into were it not for this representation.

9 69. Defendants' Option to Revoke Settlement. If, after the Response Deadline, (i)
10 the number of Settlement Class Members who submitted timely and valid written Requests for
11 Exclusion from the Settlement is at least ten percent (10%) of all Settlement Class Members, or
12 (ii) a number of Class Members whose share of the Net Settlement is 10% or more either opt
13 out of and/or object to the Settlement, or both (i) and (ii), Defendants shall have, in its sole
14 discretion, the option to terminate this Settlement and all actions taken in its furtherance of it
15 will be thereby null and void. If Defendants exercise the option to terminate this Settlement,
16 Defendants shall: (a) provide written notice to Class Counsel within thirty (30) calendar days
17 after the Settlement Administrator notifies the Parties of the total number of opt-outs, and (b)
18 pay all Settlement Administration Costs incurred up to the date.

19 70. Entire Agreement. This Settlement Agreement and any attached Exhibits
20 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
21 written or oral agreements may be deemed binding on the Parties.

22 71. Amendment or Modification. This Settlement Agreement may be amended or
23 modified only by a written instrument signed by counsel for all Parties or their successors-in-
24 interest.

25 72. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
26 warrant and represent they are expressly authorized by the Parties whom they represent to
27 negotiate this Settlement Agreement and to take all appropriate action required or permitted to
28 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to

1 execute any other documents required to effectuate the terms of this Settlement Agreement. The
2 Parties and their counsel will cooperate with each other and use their best efforts to effect the
3 implementation of the Settlement. If the Parties are unable to reach agreement on the form or
4 content of any document needed to implement the Settlement, or on any supplemental
5 provisions that may become necessary to effectuate the terms of this Settlement, the Parties
6 may seek the assistance of the Court to resolve such disagreement.

7 73. Binding on Successors and Assigns. This Settlement Agreement will be binding
8 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
9 defined.

10 74. California Law Governs. All terms of this Settlement Agreement and Exhibits
11 hereto will be governed by and interpreted according to the laws of the State of California.

12 75. Execution and Counterparts. This Settlement Agreement is subject only to the
13 execution of all Parties. However, the Settlement may be executed in one or more counterparts.
14 All executed counterparts and each of them, including facsimile and scanned copies of the
15 signature page, will be deemed to be one and the same instrument provided that counsel for the
16 Parties will exchange among themselves original signed counterparts.

17 76. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
18 believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action
19 and have arrived at this Settlement after arm's-length negotiations and in the context of
20 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
21 further acknowledge that they are each represented by competent counsel and that they have
22 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
23 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
24 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
25 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
26 reasonable.

27 77. Invalidity of Any Provision. Before declaring any provision of this Settlement
28 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest

1 extent possible consistent with applicable precedents so as to define all provisions of this
2 Settlement Agreement valid and enforceable.

3 78. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
4 to class certification for purposes of this Settlement only; except, however, that Plaintiffs or
5 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
6 request from the Court, and either party may appeal any court order that materially alters the
7 Settlement Agreement's terms. If, for any reason, the Settlement is not approved, this
8 Stipulation of Class Action Settlement will have no force or effect.

9 79. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
10 dispute that has arisen between them and to avoid the burden, expense and risk of continued
11 litigation. In entering into this Settlement, Defendants do not admit, and specifically denies,
12 that it violated any federal, state, or local law; violated any regulations or guidelines
13 promulgated pursuant to any statute or any other applicable laws, regulations or legal
14 requirements; breached any contract; violated or breached any duty; engaged in any
15 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its
16 employees. Neither this Settlement, nor any of its terms or provisions, nor any of the
17 negotiations connected with it, will be construed as an admission or concession by Defendants
18 of any such violations or failures to comply with any applicable law. Except as necessary in a
19 proceeding to enforce the terms of this Settlement, this Settlement and its terms and provisions
20 will not be offered or received as evidence in any action or proceeding to establish (i) any
21 liability or admission on the part of Defendants; (ii) the existence of any condition constituting
22 a violation of, or a non-compliance with, federal, state, local or other applicable law; or (iii)
23 that a class should be certified as Plaintiffs propose.

24 80. Waiver. No waiver of any condition or covenant contained in this Settlement or
25 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
26 constitute a further waiver by such party of the same or any other condition, covenant, right or
27 remedy.

1 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the
2 terms and conditions of this Settlement. Accordingly, this Settlement Agreement will not be
3 construed more strictly against one party than another merely by virtue of the fact that it may
4 have been prepared by counsel for one of the Parties. It being recognized that, because of the
5 arms-length negotiations between the Parties, all Parties have contributed to the preparation of
6 this Settlement Agreement.

7 82. Representation By Counsel. The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this
9 Settlement Agreement, and that this Settlement Agreement has been executed with the consent
10 and advice of counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are
11 no liens on the Settlement Agreement.

12 83. All Terms Subject to Final Court Approval. All amounts and procedures
13 described in this Settlement Agreement herein will be subject to final Court approval.

14 84. Cooperation and Execution of Necessary Documents. All Parties will cooperate
15 in good faith and execute all documents to the extent reasonably necessary to effectuate the
16 terms of this Settlement Agreement.

17 ///

18 ///

19 ///

85. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

SO AGREED AND STIPULATED

PLAINTIFF

Dated: 04/28/2022


Neil Fraser

PLAINTIFF

Dated: _____

Cody Lamont

DEFENDANT

Dated: _____

By: _____
Title: _____

[SIGNATURES CONTINUE ON NEXT PAGE]

JUSTICE LAW CORPORATION.

DATED:

5/2/22

By



Douglas Han

Shunt Tatavos-Gharajeh

Jason Rothman

Attorneys for Plaintiffs Neil Fraser and Cody
Lamont, and all others similarly situated

JACKSON LEWIS, P.C.

By

DATED:

Lawrence H. Stone

Attorneys for Defendants Valley Power
Systems, Inc., and Valley Power Systems
North, Inc.

JUSTICE LAW CORPORATION.

DATED: _____

By _____
Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiffs Neil Fraser and Cody
Lamont, and all others similarly situated

JACKSON LEWIS, P.C.

DATED: May 6, 2022

By 
Lawrence H. Stone
Attorneys for Defendants Valley Power
Systems, Inc., and Valley Power Systems
North, Inc.

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Neil Fraser, et al., v Valley Power Systems, Inc., et al.

PLEASE READ THIS NOTICE CAREFULLY.

You have received this Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced matter.

You do not need to take any action to receive a settlement payment and, unless you request to be excluded from the settlement, your legal rights may be affected.

This Notice is designed to advise you of your rights and options with respect to the settlement.

By order of the Superior Court of California for the County of Los Angeles (the "Court" or "Los Angeles County Superior Court"), you are notified that: preliminary approval of a class action settlement reached between Neil Fraser and Cody Lamont (collectively "Plaintiffs") and Defendants Valley Power Systems, Inc., a California corporation, and Valley Power Systems North, Inc., a California corporation (collectively "Defendant") was granted on **Preliminary Approval Date**, in the case entitled *Neil Fraser, et al., v Valley Power Systems, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV00279, which may affect your legal rights.

If you are a Class Member (or member of the Class), you need not take any action to receive a settlement payment, but you have the opportunity to request exclusion from the settlement (in which case you will not receive payment under the settlement), object to the settlement, and/or dispute the Workweeks credited to you, if you so choose, as explained more fully in Section III below.

I. IMPORTANT DEFINITIONS

"Class Member" means all current and former California-based (*i.e.*, currently "residing" in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees (whether hired directly or through a staffing agency or labor contractor) of Defendants within the State of California

"PAGA Member" means all current and former California-based (*i.e.*, currently "residing" in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees (whether hired directly or through a staffing agency or labor contractor) of Defendants within the State of California.

"Class Period" means the period from January 6, 2016 through May 2, 2022.

"PAGA Period" means the period from January 6, 2019 through May 2, 2022.

II. BACKGROUND OF THE ACTION

On January 6, 2020, Plaintiff Neil Fraser filed a class action complaint in Los Angeles Superior Court (Case No.20STCV00279) alleging the following violations under California law: (1) Failure to Pay Overtime Wages Under Labor Code §§ 510 & 1198, (2) Meal Period Liability Under Labor Code § 226.7, (3) Rest-Break Liability Under Labor Code § 226.7, (4) Failure to Pay Minimum Wages Under Labor Code §§ 1194 & 1197, (5) Waiting Time Penalties Under Labor Code §§ 201-203, (6) Failure to Provide Compliant Wage Statements Under Labor Code § 226(a), (7) Failure to Reimburse Expenses Under Labor Code § 2802, and (8) Violation of Business & Professions Code § 17200, *et seq.*

On November 11, 2020, Plaintiff Cody Lamont submitted a letter to the LWDA alleging the same causes of action in order to pursue an action brought under the PAGA. Then, on or around March 25, 2021, a First Amended Complaint was filed that added Codey Lamont as a named representative along with an additional cause of action pursuant to the Private Attorneys General Act.

Plaintiffs allege that Defendants violated the California Labor Code and California Business and Professions Code with respect to herself and the Class Members by, *inter alia*, failing to properly pay for all hours worked, failing to provide timely meal and rest breaks or one hour of premium pay in lieu thereof, failing to reimburse all necessary business expenditures, failing to provide accurate wage statements, and associated waiting time penalties thereby engaging in unfair business

practices and owing penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq.* (“PAGA”).

Defendants deny all of the allegations in the Action or that it violated any law. Defendants contend that at all times it has fully complied with all applicable federal, state, and local laws. Defendants further contend that it paid employees for all time worked, accurately recorded all hours worked, accurately calculated pay, enforced California compliant meal and rest periods or provided one hour of premium pay in lieu thereof, and reimbursed any employees for any necessary business expenses which they paid or incurred. It is Defendants’ position that, if litigation continued, class certification would be denied on all claims and/or the claims would be subject to motions for summary adjudication and/or summary judgment. Defendants contend that the theories put forth by the Plaintiffs in the Action are contrary to the facts and that the PAGA claim lacks merit. Defendants further contends that the Plaintiffs are not an adequate class representative, their claims are not typical of the Class Members, and individual issues predominate over common ones.

Shortly after the mediation on February 17, 2022, the Parties reached a settlement with the assistance of a respected class action mediator. The Parties have since entered into the Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”).

On [Preliminary Approval Date], the Court entered an order preliminarily approving the Settlement. The Court has appointed CPT Group as the administrator of the settlement (“Settlement Administrator”), Plaintiffs as representatives of the Class (“Class Representative”), and the following law firm as counsel for the Class (“Class Counsel”):

Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
JUSTICE LAW CORPORATION
751 Fair Oaks Avenue, Suite 101
Pasadena, California 91103

The settlement represents a compromise and settlement of highly disputed claims. Nothing in the settlement is intended or will be construed as an admission by Defendants that the claims in the Action have merit or that Defendants have any liability to Plaintiffs or to Class Members. Plaintiffs and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the settlement is fair, reasonable and adequate, and that the settlement is in the best interests of the Class Members.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total Maximum Settlement Amount is Two Million Dollars and Zero Cents (\$2,000,000.00) (the “Maximum Settlement Amount”). The portion of the Maximum Settlement Amount that is available for payment to Class Members who do not timely and validly request exclusion from the settlement (“Participating Class Members”) is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Maximum Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees in the amount of up to \$700,000.00 and reimbursement of litigation costs and expenses in the amount of up to \$40,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (2) service award to Plaintiff Neil Fraser in the amount of up to \$10,000.00 and a service award to Plaintiff Cody Lamont in the amount of up to \$10,000.00 (“Service Payment”); (3) fees and expenses of administration of the Settlement to the Settlement Administrator is expected not to exceed \$11,000.00 (“Settlement Administration Costs”); (4) the Class Members’ and Defendants’ employment taxes; and (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the amount of \$75,000.00 to the California Labor and Workforce Development Agency (“LWDA”).

Participating Class Members will be entitled to receive payment under the settlement of their share of the Net Settlement Amount (“Individual Settlement Amount”) based on the numbers of workweeks worked by Class Members as a non-exempt hourly employee for Defendants in California from January 6, 2016, to April 17, 2022 (“Workweeks”). Workweeks were calculated based on the start and end dates of each Class Member’s employment during the Class Period.

Participating PAGA Members will receive payment under the settlement for their share of the PAGA Payment based on the

numbers of pay periods worked by PAGA Members as a non-exempt hourly employee for Defendants in California from January 6, 2019 to April 17, 2022 (“Pay Period”). Pay Periods were calculated based on the start and end dates of each PAGA Member’s employment during the PAGA Period. **Eligible PAGA Members will not be able to exclude themselves from receiving their portion of the PAGA Payment.**

The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the Workweek Value. Each Class Member’s “Individual Settlement Amount” will be calculated by multiplying each individual Class Member’s total number of Workweeks by the Workweek Value.

Each Individual Settlement will be allocated as twenty percent (20%) wages (which will be reported on an IRS Form W2), and eighty percent (80%) penalties and interest (which will be reported on an IRS Form 1099, if applicable). Each Individual Settlement Amount will be subject to reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Amount, resulting in a net payment to the Settlement Class Member referred to as the “Individual Settlement Payment.”

If the Court grants final approval of the settlement, Individual Settlement Payments will be mailed to Participating Class Members and PAGA Members at the address that is on file with the Settlement Administrator. **If the address to which this Notice was mailed is not correct, or if you move after you receive this Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure your receipt of payment that you may be entitled to.**

B. Your Workweeks Based on Defendants’ Records

According to Defendants’ payroll records:

From January 6, 2016 to May 2, 2022, you worked [REDACTED] Workweeks for either Valley Power Systems, Inc. and/or Valley Power Systems North, Inc.

A description of how Workweeks were calculated and credited to Class Members is described above in Section III.A. If you wish to dispute the Workweeks credited to you, you may submit such dispute (a “Workweeks Dispute”) in writing to the Settlement Administrator. The written dispute must: (a) contain your full name, address, telephone number, and signature; (b) contain the case name and number of the action *Neil Fraser, et al., v Valley Power Systems, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV00279; (c) contain a clear statement indicating that you dispute the number of Workweeks credited to you; (d) documentation that supports your belief that you should be credited with a different number of Workweeks; and (e) be mailed to the Settlement Administrator at the address listed in Section IV.B below, postmarked **no later than [Response Deadline]**.

C. Your Estimated Individual Settlement Amount

As explained above, your estimated Individual Settlement Payment is based on the number of Workweeks credited to you.

Your Individual Class Member Settlement Amount is estimated to be \$ [REDACTED].

Your Individual PAGA Member Settlement Amount is estimated to be \$ [REDACTED].

The Individual Settlement Amount is subject to reduction for employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Amount and will only be distributed if the Court approves the settlement and after the settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Amount reflected in this Notice is only an estimate. Your actual Individual Settlement Payment may be higher or lower.

D. Released Claims

Upon the Effective Date, each of the Participating Class Members (including the Class Representatives) will be deemed to have, and by operation of the Judgment will have fully, finally, and forever released, relinquished and discharged Defendants and the Released Parties from any and all Released Claims.

“Released Claims” means all causes of action and factual or legal theories that were alleged in the operative complaints or

that could have been alleged against Defendants based on the facts contained in the operative complaints, including all of the following claims for relief: (a) failure to pay all wages, including but not limited to minimum wages and overtime wages due; (b) failure to provide proper meal and rest periods, and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate or properly formatted wage statements; (d) waiting time penalties; (e) failure to reimburse business expenditures, (f) unfair business practices that could have been premised on the facts, claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (g) any other claims or penalties under the California Labor Code or other wage and hour laws pleaded in the Action, including but not limited to California Labor Code Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, 203, 204, 205.5, 218.5, 221, 226, 226(a), 226(g), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1021.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802; and, the California Business and Professions Code Section 17200; (h) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief, and, exclusively to PAGA Members, (i) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the facts, claims, the letter to the LWDA dated December 10, 2021, and causes of action or legal theories described above or any of the facts, claims, causes of action or legal theories of relief pleaded in the operative complaint.

“Released Parties” means Captek Softgel International, Inc., a California corporation, and their past, present and/or future, direct and/or indirect, owners, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, legal representatives, and joint venturers, if any.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount of up to thirty-five percent (35%) of the Maximum Settlement Amount (i.e., an amount of up to \$700,000.00) and reimbursement of litigation costs and expenses in an amount of up to Forty Thousand Dollars (\$40,000.00), to be paid from the Maximum Settlement Amount, subject to approval by the Court. Class Counsel has been prosecuting the Action on behalf of Plaintiffs and Class Members on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Service Payments to Plaintiffs

Plaintiffs Neil Fraser and Cody Lamont will each seek an amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) as their respective Service Payment in recognition of their services in connection with the Action. The Service Payment will be paid from the Maximum Settlement Amount subject to approval by the Court, and if awarded, it will be paid to Plaintiffs in addition to their Individual Settlement Payment that they are entitled to under the settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator, CPT Group, costs are not to exceed Eleven Thousand Dollars and Zero Cents (\$11,000.00) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the settlement, processing Requests for Exclusion, Workweeks Disputes, and objections, calculating Individual Settlement Payments, and distributing payments and tax forms under the settlement, and shall be paid from the Maximum Settlement Amount subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to receive your Individual Settlement Payment from the settlement, you do not have to do anything. You will automatically be issued your Individual Settlement Payment in the form of a check unless you decide to exclude yourself from the settlement. Unless you elect to exclude yourself from the Settlement, you will be bound by the terms of the settlement and any judgment that may be entered by the Court based thereon, and you will be deemed to have released the Released Claims against the Released Parties as described in Section III.D above. You will have 180 days to cash the check. If you do not cash the check, the money will revert to the state, but you will still be deemed to have released your claims. As a Class Member, you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Settlement

If you do not wish to participate in the class action portion of the settlement, you may seek exclusion from the settlement by submitting a written request to be excluded from the settlement (“Request for Exclusion”) to the Settlement Administrator at the following address:

[Settlement Administrator]

[Address]

A request for exclusion must: (a) contain your full name, address, and signature; (b) contain the case name and number of the Action (*Neil Fraser, et al., v Valley Power Systems, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV00279); (c) contain a statement indicating that you intend to be excluded from the Class Member portion of the settlement; and (4) be mailed to the Settlement Administrator at the address listed above, postmarked **no later than [Response Deadline]**.

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be entitled to receive any payment from the Class Member portion of the settlement, will not be bound by the settlement (and the release of Released Claims stated in Section III.D above), except for the release of PAGA claims which is binding on all PAGA Members, and will not have any right to object to, appeal, or comment on the settlement. Any Class Members who do not submit a timely and valid Request for Exclusion will be deemed Participating Class Members and will be bound by all terms of the settlement, including those pertaining to the release of Released Claims stated in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

C. Objecting to the Settlement

You can object to the terms of the Class Member settlement as long as you have not submitted a Request for Exclusion.

To object, you must do so by way of a written objection that: (a) contains your full name, dates of employment as a non-exempt or hourly-paid employee of Defendants in California, and signature; (b) contains the case name and number of the Action (*Neil Fraser, et al., v Valley Power Systems, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV00279); (c) all legal and factual bases for the objection to the Settlement; (d) whether you intend to appear at the Final Approval Hearing; (e) whether you are represented by legal counsel, and if so, identify the legal counsel and their address; and (f) is mailed to the Settlement Administrator and postmarked **no later than [Response Deadline]**.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department 12 of the Los Angeles County Superior Court located at 312 N. Spring Street., Los Angeles, CA 90012, on **[Final Approval Hearing Date]**, at **[Time]**. This hearing will determine whether the Settlement should be finally approved as fair, reasonable, and adequate and whether the attorneys’ fees, costs to Class Counsel, the Service Payment to Plaintiffs, and Settlement Administration Costs to the Settlement Administrator should be awarded.

The hearing may be continued without further notice to the Class Members. It is not necessary for you to appear at the Final Approval Hearing.

- i. If you wish to appear in person at the Final Approval hearing: You must adhere to the Los Angeles Superior Court’s COVID-19 guidelines should they still be in effect. There are currently no social distancing requirements within Los Angeles Superior Court, however face masks are mandatory in order to enter the building. This protocol may change from the time of this notice to the date of the final approval hearing and if you wish to appear in-person you are strongly encouraged to first review the court’s website which has up-to-date COVID-19 precautions. The website is at the following address www.lacourt.org and covid protocol information can be found on the front page.
- ii. If you wish to appear virtually at the Final Approval hearing: You must visit www.lacourt.org and on the front page will be the following phrase “Visit the AccessLACourt | Your Way News Center for more information on remote courtroom appearances via LACourtConnect (more information **here**) and remote service options you can access without coming to court.” The word “here” (bolded above for reference) is a link that will allow you to schedule a remote appearance. You then need to select the picture with the word “Civil” on it and follow the prompts. You

will need to create an account and you may need to pay a remote appearance fee to the court. The attorneys for Plaintiffs and/or Defendants are not responsible for any fees you incur associated with the remote appearance.

A. Notice of Final Judgment

Notice of final judgment, once granted by the court, will be posted on the claim administrator's website at the following website address < [REDACTED] >.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers which are on file with the Court.

You may view the Settlement Agreement and other court records in the Action at the Los Angeles Superior Court, located at 111 N. Hill Street, Los Angeles, CA 90012, during business hours Or by visiting the court website at < <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil> > and typing in the case number

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

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR CPT GROUP AT THE FOLLOWING TOLL-FREE NUMBER: [REDACTED].

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On May 9, 2022, I served the foregoing document described as

on interested parties in this action by electronically submitting as follows:

**State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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

Executed on May 9, 2022, at Pasadena, California.


Mariah Anderson