

**SETTLEMENT AGREEMENT
AND GENERAL RELEASE OF ALL CLAIMS**

This Settlement Agreement and General Release of All Claims (“Agreement”) is entered into by and between Kenneth Jennings (“Plaintiff”), on the one hand, and Hydratech, LLC and Ligon Industries, LLC (“Defendants”), on the other hand, as full and complete settlement and compromise of the within matters, agree to the terms and conditions set forth herein.

WHEREAS, Plaintiff is a former employee of Hydratech, LLC; and

WHEREAS, on or around February 22, 2021, Plaintiff filed a Complaint against Hydratech, LLC, titled *Kenneth Jennings v. Hydratech, LLC et al.*, in Fresno County Superior Court, and assigned Case No. 21CECG00511, alleging claims arising out of and relating to his employment (the “Action”); and

WHEREAS, on or around May 4, 2021, Plaintiff filed a First Amended Complaint in the Action, in which he added various claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), which claims are also alleged to arise from and relate to his employment; and

WHEREAS, Defendants deny the Claims and deny any other alleged wrongful or unlawful conduct, claim, damage, or liability of any kind with regard to Plaintiff, or in any other manner, or at all; and

WHEREAS, the Parties have had sufficient time and opportunity to evaluate the merits of their respective positions and have agreed to settle all of Plaintiff’s claims, on the terms and in the manner set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth below, and as full and complete compromise and settlement of any and all claims, causes of action, and primary rights including but not limited to the Claims and right to assert penalties under PAGA, the Parties agree as follows:

I. SETTLEMENT SUM

1. In consideration of this Agreement and Plaintiff complying with its terms, Defendants agree to pay Plaintiff Ninety Thousand Dollars (\$90,000), which shall be referred to herein as the “Settlement Amount,” as follows:

a. Eleven Thousand Dollars (\$11,000) less all applicable federal, state, and local taxes and withholding, shall be made payable to “Kenneth Jennings” as wage-based compensatory damages, for which a W-2 shall be issued;

b. Forty-Four Thousand Dollars (\$44,000) shall be made payable to “Kenneth Jennings” for all other damages, interest, penalties, for which the applicable 1099 shall be issued;

c. Thirty-Five Thousand Dollars (\$35,000) shall be made payable to “Sutton Hague Law Corporation, P.C.” for attorneys’ fees and costs for which the applicable 1099s shall be issued.

All checks shall be delivered to counsel for Plaintiff, specifically to the law offices of Sutton Hague Law Corporation, P.C., 5200 N. Palm Ave., Suite 203, Fresno, California 93704.

2. Defendant will pay the Settlement Amount within fifteen (15) days after all of the following occur: (i) execution of this agreement by both Parties; (ii) receipt of a Form W-9 from Plaintiff’s counsel; and (iii) the PAGA settlement has been approved by the Court and the time to appeal the order approving the PAGA settlement has lapsed. This Agreement is expressly conditioned on the Court granting approval of the PAGA Settlement Agreement attached hereto as “Exhibit A.” **Should the Court refuse or fail to grant approval of the PAGA Settlement Agreement attached hereto, this Agreement shall be null and void.**

3. As part of the Agreement to settle Plaintiff’s claims, Plaintiff is authorized to classify his separation of employment with Hydratech, LLC, as a voluntary resignation. Defendants agree to respond to all inquiries from prospective employers of Plaintiff with a neutral reference consisting of only: (1) Plaintiff’s dates of employment; and (2) Plaintiff’s job title at the time of separation.

4. Plaintiff acknowledges and agrees that Defendants and their attorneys, officers, directors, employees, agents and representatives have not made any representations regarding the tax consequences of any amounts paid in accordance with this Settlement Agreement. Plaintiff agrees to pay, and to be solely responsible for, any and all State, local and federal taxes, if any, which are required by applicable law to be paid with respect to the Settlement Amount and/or this Settlement Agreement that is determined to be owed by Plaintiff other than payroll taxes withheld pursuant to section I.1.a above and Defendant’s share of payroll taxes as required by law.

5. Plaintiff acknowledges and agrees that the Settlement Amount is being paid in exchange for his agreement to this Settlement Agreement, including but not limited to Plaintiff’s agreement to waive and release the Released Claims as set forth in this Settlement Agreement , and that Plaintiff would not be entitled to payment of the Settlement Amount otherwise. Plaintiff further understands and agrees that the Settlement Amount includes all wages, expenses or other amounts which Plaintiff claims or may claim are due and owing to Plaintiff by Defendants as a result of his employment with Defendants. Plaintiff acknowledges and agrees that none of the terms contained herein are in violation of California Labor Code section 206.5.

6. Plaintiff acknowledges and agrees that any and all matters, claims, primary rights, and causes of action arising on or before the date of this Settlement Agreement which Plaintiff has, has had, may have or may have had against the Released Persons (as described below), including but not limited to the Released Claims (as described below), are hereby fully compromised and settled and Plaintiff shall not recover any future payments from Defendants related to his employment or the termination thereof.

II. GENERAL RELEASE OF CLAIMS

7. Plaintiff waives and releases Defendants and their owners, shareholders, members, parent corporations or entities, sister corporations or entities, related and/or affiliated entities, subsidiaries, divisions, investors, partners, general partners, limited partners, directors, officers, employees, managers, supervisors, assigns, heirs, beneficiaries, predecessors, successors, attorneys, agents, and representatives, and all others related to them, and each of them (collectively, the “Released Persons”), from any and all rights, claims, causes of action, primary rights, demands, liabilities, obligations, contracts, damages, penalties, complaints, charges, grievances, and duties, whether legal, equitable or contractual, asserted or not asserted, known or unknown, suspected to exist or not suspected to exist, which Plaintiff now has, may have, claims to have or may claim to have against the Released Persons, or any of them, arising prior to or on the date of this Settlement Agreement, including without limitation Plaintiff’s Claims and the claims he alleges or could have alleged in his complaint, and any claims of tortious or other wrongful termination, retaliation, indemnification, constructive discharge, harassment, discrimination or retaliation (on any basis including, but not limited to, age, sex, sexual orientation, national origin, race, religion, disability, or medical condition), invasion of privacy, defamation, slander, libel, intentional or negligent infliction of emotional distress, OSHA claims or violations, breach of contract, breach of the implied covenant of good faith and fair dealing, failure to pay wages, or any claims arising under the California Fair Employment and Housing Act, the California Labor Code, the Fair Labor Standards Act, the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Family and Medical Leave Act, the Age Discrimination in Employment Act (all as they have or may be amended), or any other law (“the Released Claims”). This release includes a waiver of rights under Civil Code section 1542, as further set forth herein. Specifically excluded from this release are any claims arising under applicable Worker’s Compensation law.

8. Plaintiff has read and understands the following statutory language of Section 1542 of the California Civil Code:

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

Having been so apprised, Plaintiff elects to waive the benefits of Section 1542, and further elects to and does assume all risks for any and all claims, whether known or unknown, suspected or not suspected, arising from the subject matter of this Settlement Agreement, including but not limited to the Released Claims, and knowingly and voluntarily releases the Released Persons from any and all liability and claims arising out of such matters.

9. Plaintiff represents and warrants that Plaintiff has not sold, assigned, transferred, subrogated or otherwise disposed of any interest in the Released Claims, or any of them, and Plaintiff agrees to indemnify, defend and hold harmless the Released Persons, and each of them, from any and all liability and claims arising out of any such sale, assignment, transfer, subrogation, or other disposition.

III. GENERAL

10. Plaintiff declares that, before signing this Settlement Agreement, Plaintiff had an opportunity to consult with attorneys of Plaintiff's own choosing, and to be apprised of sufficient relevant information, both through experts, attorneys or other sources of Plaintiff's own selection, in order that Plaintiff might intelligently exercise Plaintiff's own judgment in deciding whether to execute, and in deciding on the contents of, a release, compromise and settlement of the Released Claims.

11. Plaintiff agrees that neither he nor any of his agents shall, in any manner whatsoever, disclose, directly or indirectly, any information concerning the monetary terms and conditions of this Agreement or the monetary proposals made during the negotiations that resulted in this Agreement to anyone except a) to the Court as required to obtain Court approval of the PAGA Settlement Agreement, including justification of the amount paid to Plaintiff through declarations of Plaintiff and his Counsel; b) if compelled by a process of law; or c) if compelled by other necessity, such as tax reporting, business necessity, or loan applications, provided that Plaintiff advises any such person to whom disclosure is made as a matter of such other necessity that the matter(s) disclosed are to be held in the strictest confidence and may not be disclosed to or discussed with any other person, unless compelled by process of law or other necessity.

Disclosure by Defendants or their counsel of the terms or conditions of this Agreement to anyone other than for tax reporting, business necessity, or loan applications shall be construed as a waiver or modification of this provision or the obligations of Plaintiff arising by virtue of this provision and shall invalidate any claim Defendant may have, or which may arise, for any breach of this Paragraph 11 by Plaintiff.

12. The Parties understand and agree that this Agreement constitutes a compromise settlement of disputed claims and contentions, and that the payment of monies by Defendants as set forth in this Agreement shall not be construed or deemed in any way to be an admission of the truth of Plaintiff's allegations, nor an admission of liability or wrongdoing by Defendants. Defendants expressly deny any such liability or wrongdoing toward Plaintiff, and maintains that its actions or practices toward Plaintiff were at all times proper and lawful. Defendants have agreed to settle this dispute, and to tender the consideration set forth in this Agreement solely in an effort to avoid the costs, delays and disruptions attendant to litigation. Defendants expressly deny any fault, wrongdoing, or liability.

13. By Plaintiff's signature below, Plaintiff acknowledges and agrees that with the payment of monies by Defendants set forth in this Agreement, Defendants do not owe any additional compensation, interest, penalties, premiums, reimbursements (including attorneys' fees), benefits, and/or amounts of any kind up through the effective date of this Agreement.

14. Plaintiff promises not to file or prosecute with any court or administrative agency any claim that, pursuant to this Agreement, has been released or waived. Plaintiff also promises that Plaintiff shall not initiate or cause to be initiated against the other any investigation, audit, compliance review, or proceeding of any kind, or participate in same, individually or as a representative or member of a class, under any contract (express or implied), law, statute, or

regulation (whether federal, state, or local). Plaintiff represents that Plaintiff has no pending claims, suits or charges against Defendants other than the Action.

15. The Parties agree to take no action which is intended, or would reasonably be expected, to harm each other or their reputations, or which would reasonably be expected to lead to unwanted or unfavorable publicity to each other, except as necessary in sworn testimony in a valid legal proceeding.

16. Plaintiff declares that Plaintiff's decision to execute, and execution of, this Settlement Agreement is knowing, free and voluntary, and that Plaintiff's decision to enter into this Settlement Agreement was not based on or influenced by any declaration or representation of Defendants or their attorneys or agents which is not expressly set forth in this Settlement Agreement.

17. Each of the parties to this Settlement Agreement shall bear all of their own costs, expenses and attorneys' fees incurred in connection with this Agreement, except to the extent that an award of attorneys' fees and costs is available to Plaintiff's Counsel under the PAGA Settlement Agreement attached hereto as "Exhibit A."

18. No part of this Settlement Agreement may be amended, modified or waived in any way unless such amendment, modification or waiver is set forth in a later writing signed by both Plaintiff and Defendant. A modification, amendment or waiver of any one provision of this Settlement Agreement shall not be deemed to be a modification, amendment or waiver of any other provision of this Settlement Agreement.

19. The provisions of this Settlement Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns.

20. Plaintiff and Defendants, and each of them, acknowledge and agree that this Settlement Agreement is a complete expression of all of their agreements and understandings concerning the subject matter hereof, and that any prior or contemporaneous agreements, understandings or representations of the parties, whether express or implied, are no longer of any force and effect.

21. If a court of competent jurisdiction finally holds that any provision of this Settlement Agreement is invalid, illegal, or unenforceable, that holding shall not affect the validity of the other provisions of this Settlement Agreement, which shall remain in full force and effect, and this Settlement Agreement shall be construed as if the offending provision(s) had not been contained herein.

22. The laws of the State of California, without giving effect to its conflict of law provisions, shall govern any dispute, claim, action, or proceeding relating to or arising out of this agreement.

23. To the extent that a dispute arises related to any breach of this Agreement, the prevailing party in such a dispute will be entitled to recovery of his or its reasonable costs and attorneys' fees.

24. The Parties agree that the Fresno County Superior Court shall retain jurisdiction of this matter to enforce the terms of the Settlement Agreement pursuant to California Code of Civil Procedure section 664.6 or to seek damages for breach of this Settlement. This document shall be admissible evidence, without any objection, to enforce it, and it is admissible pursuant to Evidence Code section 1123.

25. This Settlement Agreement may be executed in counterparts and each counterpart, when executed, shall have the efficacy of a second original. Electronic or facsimile copies of any such signed counterparts may be used in lieu of the original for any purpose.

AGREED:

Dated: 10/21/2021, 2021

By: KENNETH JENNINGS

DocuSigned by:



54217AC65D344A7...

Dated: _____, 2021

By: HYDRATECH, LLC



Troy Brandt (Nov 4, 2021 08:47 CDT)

Name: **Troy Brandt**

Title: Director of Sales

Dated: _____, 2021

By: LIGON INDUSTRIES, LLC

Name: _____

Title: _____

EXHIBIT A

KENNETH JENNINGS v.

HYDRATECH, LLC, et al.

California Superior Court, County of Fresno

Case No. 21CECG00511

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Plaintiff Kenneth Jennings, in his capacity as representative of the State of California and on behalf of other aggrieved employees, and Defendants Hydratech, LLC and Ligon Industries, LLC (“Defendants”), hereby enter into this Settlement Agreement and Release (“Settlement”). The Private Attorney General Act of 2004, Labor Code section 2698 *et seq.* is hereinafter referred to as (“PAGA”).

This Settlement Agreement and Release of Claims is a compromise between Defendants and Kenneth Jennings (“Plaintiff”) regarding Plaintiff’s alleged wage and hour violations, including PAGA claims, sought in the following action titled: *Kenneth Jennings v. Hydratech, LLC et al.*, Fresno County Superior Court Case No. 21CECG00511 (the “Action”).

This Agreement is subject to the approval of the Court and is made for the sole purpose of consummating the settlement of this PAGA Action subject to the following terms and conditions. As detailed below, in the event the Court does not enter orders consistent with the terms of the Settlement or the conditions precedent are not met for any reason, this Agreement shall be void and shall be of no force or effect whatsoever.

I. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Agreement are not specifically defined below, but are defined elsewhere in this Agreement, they are incorporated by reference into this definition section.

1. Action.

“Action” shall refer to the civil action of *Kenneth Jennings v. Hydratech, LLC et al.*, Fresno County Superior Court Case No. 21CECG00511, including any amendments thereto.

1 **2. Administrative Expenses.**

2 “Administrative Expenses” shall include all costs and expenses associated with the
3 Settlement Administrator.

4 **3. Covered Employees.**

5 The term “Covered Employees,” for the purposes of this Settlement only, shall mean and
6 include all current and former nonexempt employees of Hydratech, LLC in California from
7 February 28, 2020, through the date of the Court’s approval of this Settlement. Defendants estimate
8 there are 50 Covered Employees.

9 **4. Attorneys’ Fees.**

10 “Attorneys’ Fees” shall mean Plaintiff’s Counsel’s attorneys’ fees as set forth in Paragraph
11 III.1.

12 **5. Court.**

13 “Court” shall mean the Superior Court of California in and for the County of Fresno.

14 **6. Defendants.**

15 “Defendants” shall mean Hydratech, LLC and Ligon Industries, LLC.

16 **7. Defense Counsel.**

17 “Defense Counsel” shall mean the attorneys of Sagaser, Watkins & Wieland PC.

18 **8. Effective Date.**

19 The “Effective Date” shall be the date when all of the following events have occurred: (1)
20 the Court enters an order and judgment approving the Settlement; and (2) the time for appeal, if
21 applicable (as explained herein), has expired. If no objection by the LWDA is made to the
22 Settlement and the Court approves the Attorneys’ Fees in full, there is no right to appeal and the
23 Effective Date is the date upon which the Court signs the final order and judgment. If the Court
24 does not approve all requested Attorneys’ Fees, Plaintiff shall notify Defendants in writing within
25 ten (10) days of the entry of judgment approving the Settlement whether Plaintiff intends to appeal
26 the award(s). If an objection has been filed and/or heard at the hearing on Plaintiff’s Motion for
27 Approval, or if the Court does not approve Attorneys’ Fees in full, the Effective Date means: (1)
28 the date of final affirmation of the approval order and judgment from any appeal, the expiration of

the time for, or the denial of, a petition to review the approval order, or if review is granted, the date of final affirmation of the approval order and judgment following review pursuant to that grant; (2) the date of final dismissal of any appeal from the approval order and judgment or the final dismissal of any proceeding to review the approval order and judgment, provided that the approval order and judgment is affirmed and/or not reversed in any part; (3) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's approval of the Resolution, as determined under Rule 8.104(a)(3) of the California Rules of Court; or (4) if based on the award of less than the award of the full amount of requested Attorneys' Fees, the date Plaintiff gives written notice of his intent to waive his right to appeal, if applicable.

9. Gross Settlement Amount.

"Gross Settlement Amount" or "GSA" shall mean Thirty-Five Thousand Dollars (\$35,000). The GSA includes: (1) Administrative Expenses; (2) Attorneys' Fees; (3) Individual Penalties Payments; and (4) the payment to the LWDA.

10. Individual Penalties Payment.

"Individual Penalties Payment" shall mean the amount which is ultimately distributed to each Covered Employee.

11. Net Settlement Amount.

"Net Settlement Amount" or "NSA" shall mean the GSA, less Administrative Expenses and Attorneys' Fees.

12. PAGA Representative.

"PAGA Representative" shall mean Plaintiff Kenneth Jennings.

13. Parties.

"Parties" shall mean the Plaintiff and Defendants.

14. Plaintiff.

"Plaintiff" shall mean Plaintiff Kenneth Jennings.

15. Plaintiff's Counsel.

"Plaintiff's Counsel" shall mean the attorneys of Sutton Hague Law Corporation, P.C.

1 **16. Released Claims.**

2 “Released Claim(s)” shall mean and include any and all claims for civil penalties that
3 could have been assessed or collected by Plaintiff or the LWDA, a State of California Executive
4 Branch Agency (“LWDA”) under the PAGA, based on the factual allegations of Plaintiff’s
5 December 30, 2020 letter to the LWDA and/or Plaintiff’s First Amended Complaint, filed in this
6 Action on or around May 4, 2021, including but not limited to any claims for civil penalties for
7 failure to pay minimum wages, failure to pay overtime, failure to pay all wages owed each pay
8 period, failure to provide compliant meal periods, failure to provide compliant rest periods, failure
9 to timely pay all wages, failure to pay wages due upon demand, failure to issue accurate itemized
10 wage statements, failure to maintain accurate payroll records for its non-exempt employees, failure
11 to provide suitable seating, failure to provide notice of pay, and failure to pay all wages due and
12 owing upon termination. The Released Claims only include claims under the PAGA, arising out
13 of the facts and circumstances at issue in the Action, and do not include the individual claims of
14 the Aggrieved Employees.

15 **17. Released Parties.**

16 “Released Parties” shall mean and include Defendants and their past, present and/or future
17 officers, directors, employees, and agents.

18 **18. Settlement.**

19 “Settlement” shall mean the settlement memorialized in this Agreement.

20 **19. Settlement Administrator.**

21 “Settlement Administrator” means Simpluris, Inc., or any other third-party administrator
22 mutually agreed to by the Parties and approved by the Court, which will perform the duties of: (a)
23 calculating the amounts due to each Aggrieved Employee pursuant to the Settlement; (b) providing
24 Individual Penalties Payments, along with IRS Forms 1099, to the Aggrieved Employees; (c)
25 reporting the Individual Penalties Payment amounts of each Aggrieved Employee to all required
26 taxing and other authorities; (d) utilizing the National Change of Address Database maintained by
27 the United States Postal Service, mail-forwarding information and/or skip tracing methods, as
28 reasonable, to update the Database and taking steps to send Individual Penalties Payments to

1 current mailing addresses; (e) performing such other duties as are described herein; (f) establishing
2 a Qualified Settlement Fund pursuant to applicable law for the purpose of administering this
3 Settlement; and (g) providing payment to the LWDA pursuant to section III.2.a) below.

4 **20. Settlement Approval Date.**

5 “Settlement Approval Date” shall mean the date upon which the Court enters an order
6 approving this Settlement.

7 **21. Settlement Period.**

8 The “Settlement Period” shall be defined as commencing on February 28, 2020, and
9 continuing through the date on which the Court enters an order approving the Settlement.

10 **II. RECITALS**

11 1. This Agreement encompasses and shall include all Covered Employees as defined
12 herein.

13 2. On December 30, 2020, Plaintiff, on behalf of all Covered Employees, notified the
14 Labor and Workforce Development Agency (“LWDA”) of his allegations against Hydratech, LLC
15 for failure to pay minimum wages, failure to pay overtime, failure to pay all wages owed each pay
16 period, failure to provide compliant meal periods, failure to provide compliant rest periods, failure
17 to timely pay all wages, failure to pay wages due upon demand, failure to issue accurate itemized
18 wage statements, failure to maintain accurate payroll records for its non-exempt employees, failure
19 to provide suitable seating, failure to provide notice of pay, and failure to pay all wages due and
20 owing upon termination. The LWDA did not provide any notice that it intended to investigate
21 Plaintiff’s allegations.

22 3. On or about February 22, 2021, Plaintiff filed Case No. 21CECG00511 in the
23 Superior Court of Fresno County, alleging claims on an individual basis arising out of and relating
24 to his employment. On or about May 4, 2021, Plaintiff filed a First Amended Complaint in the
25 Action, in which he added various claims under the Labor Code Private Attorneys General Act of
26 2004 (“PAGA”), alleging claims against Hydratech, LLC for civil penalties for failure to pay
27 minimum wages, failure to pay overtime, failure to pay all wages owed each pay period, failure to
28 provide compliant meal periods, failure to provide compliant rest periods, failure to timely pay all

1 wages, failure to pay wages due upon demand, failure to issue accurate itemized wage statements,
2 failure to maintain accurate payroll records for its non-exempt employees, failure to provide
3 suitable seating, failure to provide notice of pay, and failure to pay all wages due and owing upon
4 termination.

5 4. Hydratech, LLC filed a general denial to Plaintiff's Complaint, denying all material
6 allegations of liability and asserting various affirmative defenses. Hydratech, LLC assert that it
7 complied with applicable laws in that it compensated Covered Employees for all hours worked
8 and otherwise complied with its obligations under the California Labor Code and associated
9 regulations and Industrial Wage Orders.

10 5. Pursuant to the Parties' agreement to settle this Action, the Parties stipulate and
11 agree that Plaintiff will submit and serve an amended PAGA letter to the LWDA and Defendants,
12 which will formally name Ligon Industries, LLC as a defendant with respect to Plaintiff's
13 representative claims under PAGA. Following the expiration of the LWDA's response period
14 under Labor Code section 2699.3(a)(2)(A), the Parties will submit a stipulation of leave to amend
15 for the purpose of filing Plaintiff's Second Amended Complaint, which will formally add Ligon
16 Industries, LLC as a defendant in this Action. These amendments will be completed prior to the
17 Court's entry of an order approving this settlement. Defendants agree to cooperate in effectuating
18 these amendments and to enter into such stipulations as may be necessary to complete these
19 amendments without the need for motion practice.

20 6. Defendants are entering this Agreement solely to avoid the time and expense of
21 further litigation. Nothing in this Agreement may be construed as an admission of any wrongdoing
22 by Defendants. Defendants have taken into account the uncertainty and risks inherent in litigation.
23 Defendants have therefore concluded that it is desirable that the Action be resolved in the manner
24 and upon the terms and conditions set forth in this Agreement.

25 7. On September 29, 2021, the parties engaged in a full-day mediation before
26 experienced mediator Mark Keppler, Esq. Prior to mediation, Plaintiff and Defendants engaged in
27 both formal discovery and informal discovery that included the exchange of time and pay records
28 for Plaintiff and certain Covered Employees, the number of Covered Employees and their pay

1 rates, and other policy documents. Defendants also produced personnel documents for Plaintiff.
2 The Parties also exchanged information related to Defendants' PAGA exposure. Following a full-
3 day of arm's length and hard fought negotiations through Mr. Keppler, the parties agreed to resolve
4 this Action.

5 8. Defendants represent there are approximately 246 pay periods worked by Covered
6 Employees in the representative period of time encompassed within the Settlement Period.

7 9. Plaintiff warrants he has not sold, assigned, or transferred any claim or cause of
8 action, which he has or had against Defendants or any other person or entity who is covered by
9 this release of claims.

10 THEREFORE, in consideration of the mutual promises, assurances, and covenants set forth
11 in this Agreement, the parties agree as follows:

12 **III. AGREEMENT**

13 1. **Gross Settlement Amount.** Subject to the notice procedures set forth below and
14 Approval by the Court, Defendants agree to pay the Gross Settlement Amount ("GSA") of
15 THIRTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$35,000.00) to settle the Action.
16 The GSA shall be allocated as follows, subject to approval by the Court: (i) up to one-third of the
17 GSA (\$11,666) for an award of Plaintiff's Counsel's attorneys' fees; (ii) up to Five Thousand
18 Dollars (\$5,000.00) for payment of Administrative Expenses; (iii) after deduction of the amounts
19 enumerated above, the Net Settlement Amount ("NSA"), estimated to be at least Eighteen
20 Thousand Three Hundred and Thirty-Four Dollars (\$18,334), shall be made to the Covered
21 Employees (including Plaintiff) and to the LWDA in accordance with Paragraph III.2.

22 2. **Distribution of the Net Settlement Amount.** The NSA shall be calculated after
23 deducting the Attorneys' Fees and Administrative Expenses. The NSA will then be distributed as
24 follows:

25 a) A total of 75% of the NSA shall be paid to the LWDA pursuant to Labor
26 Code section 2699(i).

27 b) A total of 25% of the NSA shall be distributed to the Covered Employees
28 on a pro rata basis, based on their respective number of compensable pay periods during the

1 Settlement Period, according to Defendants' records. Covered Employees will receive an IRS
2 Form 1099-MISC (Box 3) for this payment.

3 3. **Court Approval.** After full execution of this Agreement, the Parties shall submit a
4 stipulation for approval by the Court, along with the Settlement, proposed Notice Form described
5 in section VI.3 below, and declaration(s) from Plaintiff's Counsel providing support for Plaintiff's
6 Counsel's request for Attorneys' Fees, as well as justification for the settlement's fairness and
7 adequacy. Defendants shall have an opportunity to review Plaintiff's Counsel's declaration(s) prior
8 to submission of the stipulation contemplated herein. In the event that the Court does not approve
9 the Settlement by stipulation as proposed herein, Plaintiff shall promptly move the court for
10 approval of the Settlement, as well as approval of all amounts to be deducted from the GSA as
11 described in Paragraph III.1. Defendants shall not oppose the motion, and shall make reasonable
12 efforts to cooperate in obtaining approval of the Settlement. Prior to submission of the earlier of
13 stipulation or noticed motion, Plaintiff's Counsel shall submit the Agreement to the LWDA, as
14 necessary under Labor Code section 2699(l) and any other applicable provision. Should the Court
15 not grant approval of this Agreement or should the LWDA object to this Agreement, then the
16 entirety of the Agreement shall be null and void, unless otherwise agreed upon in writing by the
17 Parties. The Court shall retain jurisdiction to enforce the terms and conditions of the judgment. If
18 the Agreement is null and void, and a new trial date is selected, all discovery deadlines shall be
19 based on the new trial date.

20 4. **No Reversion.** In the event the Court does not approve any amount requested to be
21 deducted from the GSA as described in Paragraph III.1, including Attorneys' Fees and
22 Administrative Expenses, any amount requested but not approved shall not revert to Defendants,
23 but shall be added to the NSA for distribution pursuant to Paragraph III.2.

24 5. **Notice of Settlement.** As part of the Agreement to settle the PAGA claims, Plaintiff
25 will file a Notice of Settlement with the Court within five (5) court days of the Parties' execution
26 of the Agreement.

27 ///

28 ///

1 **IV. RELEASED CLAIMS**

2 1. **Plaintiff's Release of Claims and General Release.** Plaintiff, on behalf of himself
3 and the State of California, agrees to release the Released Parties from the Released Claims.

4 **V. ADMINISTRATIVE EXPENSES**

5 1. **The Settlement Administrator's Costs and Expenses.** All costs and expenses due
6 the Settlement Administrator in connection with its administration of the Settlement including, but
7 not limited to, locating Aggrieved Employees, and calculating, administering and distributing
8 Notice Forms and Individual Penalties Payments to the Aggrieved Employees, shall be paid from
9 the Gross Settlement Amount.

10 **VI. NOTICE AND PAYMENT PROCEDURES**

11 1. **The Settlement Administrator.** The Parties agree that Simpluris, Inc. should be
12 appointed as Settlement Administrator. The Settlement Administrator will be responsible for
13 preparing, administering, and distributing Notice Forms, the LWDA payment, and Individual
14 Penalties Payments to the Aggrieved Employees, and issuing a final report and performing such
15 other duties as the Parties may direct.

16 Administrative Expenses are not anticipated to exceed \$5,000. In the event that
17 Administrative Expenses exceed \$5,000 any and all additional amounts shall be deducted from the
18 Gross Settlement Amount and the Net Settlement Amount will be recalculated to reflect such
19 additional Administrative Expenses. To the extent that Administrative Expenses exceed \$5,000,
20 Plaintiff's Counsel agrees to provide an explanation to the Court, supported by declarations from
21 Plaintiff's Counsel and Defense Counsel, if necessary, as to the source of the additional
22 Administrative Expenses, the reason such additional expenses were not anticipated prior to the
23 execution of this Agreement, and an explanation as to whether such additional expenses should be
24 deducted from the Gross Settlement Amount or allocated in some other manner, subject to Court
25 approval. In the event that Administrative Expenses are less than \$5,000, the difference shall be
26 added to the Net Settlement Amount for distribution to the Aggrieved Employees.

27 ///

28 ///

1 2. **Timing of Payments.**

2 a) Within fifteen (15) calendar days of the Effective Date, Defendants shall:
3 (i) provide the Settlement Administrator with an up-to-date list of Covered Employees containing
4 names, social security numbers, last-known telephone numbers, last-known mailing addresses and
5 pay periods for each Covered Employee (the "Database") and (ii) deposit with the Settlement
6 Administrator the GSA.

7 b) Within fifteen (15) calendar days following receipt of the Database and
8 GSA, the Settlement Administrator shall distribute: (i) the Individual Penalties Payments to the
9 Covered Employees by First Class U.S. Mail using the mailing address information provided by
10 Defendants and the results of the skip trace performed; (ii) the LWDA payment to the LWDA by
11 means requested or required by the LWDA payment submission processes; and (iii) the Attorneys'
12 Fees by means agreed to by Plaintiff's Counsel and the Settlement Administrator.

13 3. **Notice to Covered Employees.** Each Individual Penalties Payment shall be
14 accompanied by a letter ("Notice Form") explaining why the check is being sent and a basis for
15 the calculation. The letter shall be approved by the Court upon approval of the Settlement.

16 4. **Returned Settlement Checks.** In the event that an Individual Penalties Payment
17 check is returned to the Settlement Administrator with a forwarding address, the Individual
18 Penalties Payment check will be re-mailed to the forwarding address. In the event an Individual
19 Penalties Payment check is returned to the Settlement Administrator without a forwarding address
20 or is otherwise undeliverable, the Settlement Administrator will make a diligent effort to correct
21 the address and re-mail the returned Individual Penalties Payment check. If within the 180-
22 calendar day period following issuance of the Individual Penalties Payment check, the Covered
23 Employee contacts the Settlement Administrator or counsel for either Party with a new address,
24 the Individual Penalties Payment check will be re-issued and mailed to the new address provided
25 any such re-issued Individual Penalties Payment check will indicate on its face that it is void if not
26 negotiated within 180 calendar days of its issuance.

27 5. **Disposition of Uncashed Individual Penalties Payment Checks.** Individual
28 Penalties Payment checks shall be negotiable for not less than 180 calendar days from issuance.

All Individual Penalties Payment checks will indicate on their face that they are void if not negotiated within 180 calendar days of issuance. The Notice Form enclosed with the Individual Penalties Payments will also note this 180-day requirement. For Individual Penalties Payment checks remaining uncashed for more than 180 calendar days after issuance, the net funds shall be distributed to the Foundation for Advocacy, Inclusion & Resources ("FAIR") as an appropriate *cypres* recipient pursuant to Code of Civil Procedure section 384.¹

6. **No Effect on Employee Benefits.** All Individual Penalties Payment to Covered Employees shall be deemed to be paid to such Covered Employees in the year in which such payments actually are received by the Covered Employees. It is expressly understood and agreed that the receipt of such Individual Penalties Payment will not entitle any Covered Employees to additional compensation or benefits under any company bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Agreement, nor will it entitle any Covered Employee to any increased retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is the intent of this Settlement that the Individual Penalties Payments are the sole payments to be made by Defendants to the Covered Employees, and that the Covered Employees are not entitled to any new or additional compensation or benefits as a result of having received an Individual Penalties Payment (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

7. **Final Report by Settlement Administrator.** Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds.

VII. TAX TREATMENT OF INDIVIDUAL PENALTIES PAYMENTS.

1. **Tax Treatment.** It is expressly agreed by the Parties that all funds distributed pursuant to this Settlement will be considered penalties. Plaintiff and the Covered Employees will receive an IRS Form 1099-Misc (Box 3) for any payments received from the Settlement Administrator.

¹ FAIR's mission statement can be found at <http://www.fair-foundation.org/home.html>

2. **No Warranty.** The Parties make no warranty as to any tax consequences of any payment hereunder. Any determination of the tax consequences of those payments is the sole responsibility of the Covered Employee. Covered Employees who receive an Individual Penalties Payment pursuant to this Settlement shall be responsible for correctly characterizing such amounts for tax reporting purposes and solely responsible for any and all tax obligations associated with such receipt.

VIII. ADVICE OF ATTORNEY

1. Plaintiff acknowledges he has been encouraged to seek independent representation or legal counsel regarding the rights being waived by this Agreement, and was given a full and fair opportunity to become fully informed about the legal impact of this Agreement before signing this Agreement. Plaintiff is represented by counsel experienced in this type of matter, and this Agreement was reached after extensive negotiations. Plaintiff warrants and represents that in executing this Agreement, he has had the opportunity to have the terms of this Agreement and its consequences completely explained to them by his attorney, and fully understands the terms and consequences of this Agreement.

2. Plaintiff represents and acknowledges he is voluntarily entering into this Agreement with the full knowledge of the rights they may be waiving.

IX. SUCCESSORS

1. This Agreement shall inure to the benefit of the Covered Employees and Defendants, and each of their respective former, current and future parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys, and any past, present or future officers, directors and employees), predecessors, successors, assigns, officers, directors, employees, and any individuals or entities which could be jointly liable for any of the Released Claims as defined herein.

X. EFFECTUATION

1. The Parties shall execute any and all other documents and do all other things which may be reasonably necessary to carry out the terms of this Agreement.

2. The Court shall enter judgment upon approval of this Agreement. The Court shall retain jurisdiction over the Parties to enforce the terms of the judgment. Notice of entry of judgment and order shall be served on the LWDA.

3. The Parties agree that this Agreement may be executed in counterparts and that original signatures, facsimile signatures, or PDF files of signatures shall be binding.

XI. ATTORNEYS' FEES

1. **Attorney's Fees.** As part of the request for Court Approval, Plaintiff's Counsel will submit its request for an award of attorneys' fees associated with Plaintiff's Counsel's litigation and Settlement of this case, to be paid out of the Gross Settlement Amount, of up to one-third of the GSA (\$11,666). Defendants will not oppose this application. The Court shall determine the amount of attorneys' fees to be paid to Plaintiff's Counsel at a hearing on approval of this Settlement. Any portion of the amount sought for fees that is not awarded to Plaintiff's counsel will not revert to Defendants, but will be part of the Net Settlement Amount to be distributed to the LWDA and Covered Employees as set forth in Paragraph III.2.

2. **Each Party to Bear Its Own Costs.** Except as is specifically provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Action, and will not seek reimbursement thereof from any Party to this Agreement.

XII. MISCELLANEOUS PROVISIONS

1. **Confidentiality.** Until the time of filing of Plaintiff's Motion for Approval of the Settlement, it is understood and agreed by the Parties that the fact that this Agreement was entered into as well as its specific terms and conditions, the amount of monies paid in this Agreement, including the facts arising out of this Agreement, are to be kept absolutely confidential with respect to third parties, and not disclosed or publicized to any person. Should the Parties be asked by anyone about the circumstances under which this Agreement was entered into, its terms or provisions, or the circumstances giving rise to this Agreement, the response shall be that "the matter is resolved."

1 The Parties herein and/or their attorneys acting on their behalf are prohibited from disclosing the
2 terms of the settlement and/or amount of payment except as necessary to comply with the law or
3 for financial planning, tax preparation, and/or other necessary financial planning matters or as
4 may be necessary to apply for benefits from local, state and/or federal programs. The Parties
5 acknowledge and agree that each of them may take legal action in the event that any Party
6 discloses any terms of this Agreement in violation of this provision. The Parties will not be
7 bound by these confidential provisions in the event that a dispute arises under this Agreement
8 wherein one party seeks to enforce any term or condition of this provision against any other
9 Party. The provisions of this Paragraph XII.1. shall remain in effect only until the time of filing
10 of Plaintiff's Motion for Approval of Settlement.

11 2. **Voluntary Assistance and Non-Disparagement.** Plaintiff will not voluntarily aid
12 or assist, either directly or indirectly, any assertion or pursuit of any private claim or the
13 prosecution of any private lawsuit, action, arbitration or judicial or administrative proceeding now
14 existing or hereinafter arising against Defendants. Nothing in this paragraph shall be construed to
15 alter, diminish or limit Plaintiff's obligation to respond to a subpoena, deposition notice, court
16 order or otherwise requiring Plaintiff to appear at trial, hearing or deposition to give testimony.
17 Plaintiff agrees that he will not assert, claim or allege, through conversation or otherwise, to any
18 person that the Defendants committed any wrongful or illegal acts.

19 3. **Entire Agreement.** This Agreement is the complete and entire agreement between
20 the Parties regarding the Released Claims as of the effective date of the Agreement, and is intended
21 to be fully integrated. Any and all prior agreements and/or understandings, whether written or oral,
22 that are not set forth in this Agreement shall have no force or effect. Notwithstanding the foregoing,
23 the Parties acknowledge that Plaintiff and Defendants have entered into a separate confidential
24 agreement to settle all potential claims for discrimination, wrongful termination, retaliation, and
25 other individual damages, which may be provided to the Court for in camera review to the extent
26 necessary for the Court's approval of this Settlement. Each Party acknowledges and represents that
27 in executing this Agreement they have not relied upon any inducements, promises, or
28

1 representations made by the other Party or any person representing any other Party which are not
2 specifically set forth in this Agreement.

3 4. **Modification.** This Agreement may not be modified, except by an express written
4 agreement signed by all Parties.

5 5. **Venue.** The parties agree that this Agreement is entered into and is to be performed
6 in Fresno County, California, and that venue for any proceeding to enforce or interpret this
7 Agreement shall be in Fresno County, California.

8 6. **Construction.** Each Party to this Agreement has had an opportunity to participate
9 in the drafting of this Agreement to the extent they desire and, therefore, this Agreement shall be
10 construed according to its plain meaning and not in favor of or against any Party.

11 7. **Governing Law.** This Stipulation is intended to and shall be governed by the laws
12 of the State of California, without regard to conflict of law principles, in all respects, including
13 execution, interpretation, performance, and enforcement.

14 8. **Corporate Signatories.** Any person executing this Stipulation or any such related
15 document on behalf of a corporate signatory hereby warrants and promises, for the benefit of all
16 Parties hereto, that such person has been duly authorized by such corporation to execute this
17 Stipulation or any such related document.

18 9. **Execution in Counterparts.** This Stipulation shall become effective upon its
19 execution by all of the undersigned. The Parties and their counsel may execute this Stipulation in
20 counterparts, and execution of counterparts shall have the same force and effect as if all Parties
21 had signed the same instrument.

22 10. **Action to Enforce Agreement.** In any suit or court action to enforce the terms of
23 this Agreement, the prevailing party shall be entitled to recover attorneys' fees and costs.

24
25
26 *(signatures on following page)*
27
28

IN WITNESS WHEREOF, the Parties and their counsel have executed this Agreement on the date below their signatures or the signature of their representatives. The date of the Agreement shall be the date of the latest signature.

Dated: 10/21/2021, 2021

By: KENNETH JENNINGS

DocuSigned by:



54217AC65D344A7...

Dated: _____, 2021

By: HYDRATECH, LLC


Troy Brandt (Nov 4, 2021 08:47 CDT)

Name: **Troy Brandt**

Title: Director of Sales

Dated: _____, 2021

By: LIGON INDUSTRIES, LLC

Name: _____

Title: _____

2021-10-21 Final Settlement Agreement (Jennings) (individual and PAGA)

Final Audit Report

2021-11-04

Created:	2021-11-02
By:	Tristan Matthews (tristan@sw2law.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9Y_Q6p-jifxKyfX5TjR8qCE8uF2wyVWG

"2021-10-21 Final Settlement Agreement (Jennings) (individual and PAGA)" History

 Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)

2021-10-21 - 9:52:55 PM GMT

 Document created by Tristan Matthews (tristan@sw2law.com)

2021-11-02 - 9:23:59 PM GMT

 Document emailed to Troy Brandt (tbrandt@hydrauliccylindergroup.com) for signature

2021-11-02 - 9:24:57 PM GMT

 Email viewed by Troy Brandt (tbrandt@hydrauliccylindergroup.com)

2021-11-04 - 1:44:20 PM GMT

 Document e-signed by Troy Brandt (tbrandt@hydrauliccylindergroup.com)

Signature Date: 2021-11-04 - 1:47:56 PM GMT - Time Source: server

 Agreement completed.

2021-11-04 - 1:47:56 PM GMT