

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Plaintiff Steven DelCorso (“Plaintiff”), on behalf of the Class (as defined below) and Defendant Westland Technologies, Inc. (“Defendant”). Plaintiff and Defendant collectively are referred to in this Agreement as the “Parties.”

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which is currently estimated at \$5,000, shall not exceed \$7,500 and which shall be paid from the Qualified Settlement Fund.
- B. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
- C. **Attorney Fee Award:** The amount, not to exceed 35% of the Gross Settlement Amount or \$77,827.75, finally approved by the Court and awarded to Class Counsel. The Attorney Fee Award shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- D. **Class:** All hourly-paid or non-exempt employees employed by Defendant within the State of California during the Class Period.
- E. **Class Action:** The putative class action lawsuit, as amended, filed by Plaintiff Steven DelCorso on June 20, 2020, entitled *Steven DelCorso v. Westland Technologies, Inc.*, Case No. CV-20-002807 in the State of California, Stanislaus County Superior Court.
- F. **Class Counsel:** Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation.
- G. **Class Data:** The Class Data means information regarding Class Members that Defendant will compile from its available, existing, electronic records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: (i) each Class Member’s full name; (ii) each Class Member’s last-known address; (iii) each Class Member’s Social Security and Employee ID number; and (iv) the Class Member’s relevant dates of employment.
- H. **Class Member:** Each person eligible to participate in this Settlement who is a member of the Class as defined above.

- I. **Class Notice:** The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
- J. **Class Period:** The time period from June 20, 2016, to the date the Court issues an order granting preliminary approval of the Settlement, or March 31, 2021, whichever occurs earlier.
- K. **Class Representative or Plaintiff:** Steven DelCorso.
- L. **Class Representative Enhancement Payment:** The amount the Court awards to Plaintiff Steven DelCorso for his services as a Class Representative, which will not exceed \$10,000. This payment shall be paid from the Qualified Settlement Fund and will not be opposed by Defendant. This enhancement is subject to approval of the Court.
- M. **Complaint:** The class action complaint filed by Plaintiff which includes the original complaint filed on June 20, 2020, and the First Amended Complaint filed on February ____, 2021.
- N. **Cost Award:** The amount that the Court awards Class Counsel for payment of actual litigation costs subject to proof, which shall not exceed \$20,000. The Cost Award will be paid from the Qualified Settlement Fund and will not be opposed by Defendant.
- O. **Counsel for Defendant:** Attorneys Karl N. Haws and Jim C. Moore of Mundell, Odlum & Haws, LLP
- P. **Court:** The State of California, Stanislaus County Superior Court.
- Q. **Defendant:** Westland Technologies, Inc.
- R. **Effective Final Settlement Date:** The effective date of this Settlement will be when the Final Approval of the Settlement can no longer be appealed or, if there are no objectors and no Plaintiff in intervention at the time the Court grants Final Approval of the Settlement, the date the court enters judgment granting Final Approval of the Settlement.
- S. **Eligible Aggrieved Employees:** The aggrieved employees eligible to recover the PAGA payment shall consist of all hourly-paid or non-exempt employees who worked for Defendant within the State of California during the PAGA Period.
- T. **Exclusion Form:** The Election Not To Participate or Opt-out Form, substantially similar to the form attached hereto as **Exhibit B**, subject to Court approval.

- U. **Judgment or Final Approval:** The final order entered by the Court finally approving this Agreement.
- V. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Two Hundred and Twenty-Two Thousand Three Hundred Sixty-Five Dollars and Zero Cents (\$222,365). This is the gross amount Defendant can be required to pay under this Settlement Agreement, which includes: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement payment paid to the Class Representative, as approved by the Court; (4) Administration Costs, as approved by the Court; (5) the PAGA Payment to the LWDA and to Eligible Aggrieved Employees, as approved by the Court; and (6) credit of \$51,709 already paid to certain Class Members as part of the *Pick Up Stix* settlement campaign. Defendant's portion of payroll taxes as the Class Members' current or former employer is not included in the GSA and will be a separate obligation of Defendant. No portion of the Gross Settlement Amount will revert to Defendant for any reason.
- W. **Individual PAGA Payment(s):** The amount payable to each Eligible Aggrieved Employee from the portion of the PAGA Payment allocated to the Eligible Aggrieved Employee under the terms of this Settlement Agreement. Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment.
- X. **Individual Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement.
- Y. **LWDA:** California Labor and Workforce Development Agency.
- Z. **Net Settlement Amount or NSA:** The total amount of money available from the GSA for distribution to Participating Class Members, which is the GSA less the Attorney Fee Award, Cost Award, Class Representative Enhancement, the PAGA Payment, and Administration Costs.
- AA. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- BB. **PAGA Claim:** The putative representative cause of action alleged in the First Amended filed by Plaintiff Steven DelCorso, entitled *Steven DelCorso v. Westland Technologies, Inc.*, Case No. CV-20-002807 in the State of California, Stanislaus County Superior Court.

- CC. PAGA Notice:** The PAGA Notice refers to the pre-filing notice of Labor Code violations served by Plaintiff on the LWDA on January 19, 2021.
- DD. PAGA Payment:** The PAGA Payment consists of \$10,000 of the Gross Settlement Amount allocated to satisfy the PAGA penalties as alleged in the PAGA Claim. Seventy-five percent (75%) of the PAGA Payment (\$7,500) shall be paid to the LWDA, and twenty-five percent (25%) (\$2,500) of the PAGA Payment shall be distributed to Eligible Aggrieved Employees, on a pro rata basis, as set forth below.
- EE. PAGA Period:** The period between January 29, 2020 through the date the Court signs an order granting preliminary approval of this Settlement, or March 31, 2021, whichever occurs earlier.
- FF. PAGA Released Claims:** PAGA Released Claims mean all allegations and claims for civil penalties pursuant to PAGA based on any and all underlying Labor Code violations alleged in the Complaints or in the PAGA Notice that arose during the PAGA Period, which includes alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, and 1198.
- GG. Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement.
- HH. Parties:** Plaintiff Steven DelCorso as an individual and as a Class Representative, and Defendant Westland Technologies, Inc.
- II. Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the proposed Settlement.
- JJ. Qualified Settlement Fund or OSF:** A fund within the meaning of Treasury Regulation § 1.46B-1, 26 C.F.R. § 1.468B-1 et seq., that is established by the Settlement Administrator for the benefit of Participating Class Members, Plaintiff and Class Counsel.
- KK. Released Claims:** The released claims means all causes of action and factual or legal theories that were alleged in the Complaint or reasonably could have been alleged based on the facts and legal theories contained in the operative Complaint, including all of the following causes of action: (a) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (b) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (c) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (d) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages); (e) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (f) Violation of California Labor Code §

226(a) (Non-Compliant Wage Statements); (g) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (h) Violations of California Business & Professions Code § 17200, *et seq.* and (i) civil penalties under PAGA (Labor Code § 2698, *et seq.*)(collectively, the “Released Claims”). The period of the Release shall extend to the limits of the Covered Period. This release only applies to claims that arose during the Class Period when Class Members were employed by Defendant in a non-exempt position.

- LL. **Released Parties:** Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint employers.
- MM. **Response Deadline:** Forty-five (45) calendar days from the initial mailing of the Class Notice.
- NN. **Settlement Administrator:** The third-party administrator agreed upon by Parties to administer this Settlement is Simpluris, Inc.

II. **RECITALS**

- A. Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after the Class and PAGA Claim were filed. Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest period policies, and payroll and operational policies. Defendant also produced thousands of additional documents that comprised the time records and pay records related to the Class. Plaintiff also reviewed information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the Class Period. Plaintiff also interviewed several Class Members who worked for Defendant throughout the Class Period. Defendant also provided evidence of *Pick Up Stix* settlements, release agreements, and arbitration agreement for Class Members. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis.
- B. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel

have conducted extensive settlement negotiations, including a formal mediation on January 21, 2021, with a highly-experienced mediator that specializes in wage and hour class actions. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- C. Defendant's Reasons for Settlement.** Defendant recognizes that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant, therefore, has agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- D. Defendant's Denial of Wrongdoing.** Defendant generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class and PAGA Claim are not appropriate for class or representative treatment. Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class and PAGA Claim. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Nor should the Agreement be construed as an admission that Plaintiff can serve as an adequate Class Representative. There has been no determination by any court as to the merits of the claims asserted by Plaintiff against Defendant or as to whether a class or classes should be certified, other than for settlement purposes only.
- E. Plaintiff's Claims.** Plaintiff asserts that Defendant's defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Class Action. However, in the event that this Settlement is finally approved by the Court, none of Plaintiff, Class Members, or Class Counsel will oppose Defendant's efforts to use this Agreement to prove that Plaintiff and Class Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, excluding payroll taxes, that Defendant is obligated to pay under this Settlement Agreement is Two Hundred and Twenty-Two Thousand Three Hundred Sixty-Five Dollars and Zero Cents (\$222,365). The Gross Settlement Amount includes credit of \$51,709 already paid to certain Class Members as part of the *Pick Up Stix* settlement campaign and individual releases.
- B. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- C. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with the question of whether the Court should certify any claims in a non-settlement context in this Class Action or in any other lawsuit or venue. If the Settlement does not become effective, Defendant reserves the right to contest any issues relating to class certification, liability and damages.
- D. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff shall be appointed as the representative for the Class.
- E. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.
- F. Settlement Disbursement.** Subject to the terms and conditions of this Agreement, and the approval of the Court, the Settlement Administrator will disburse the Gross Settlement Amount as follows:
- 1. To the Plaintiff, Steven DelCorso.** In addition to his respective Individual Settlement Share, and subject to the Court's approval, Plaintiff Steven DelCorso will receive up to Ten Thousand Dollars and Zero Cents (\$10,000) as a Class Representative Enhancement Payment. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Qualified Settlement Fund. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff by

the Settlement Administrator with respect to his Class Representative Enhancement Payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Enhancement Payment and shall hold harmless Defendant, Class Counsel and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Enhancement Payment. In the event the Court does not approve the entirety of the application for the Class Representative Enhancement Payment, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff, the difference shall become part of the NSA and will be distributed to Participating Class Members. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement, and it will remain binding, nor will Plaintiff seek, request, or demand an increase in the Gross Settlement Amount on that basis.

2. **To Class Counsel.** Class Counsel will apply to the Court for, and Defendant agrees not to oppose, a total Attorney Fee Award not to exceed thirty-five percent (35%) or \$77,827.75 of the GSA and a Cost Award not to exceed \$20,000. The Settlement Administrator will pay the Court-approved amounts for the Attorney Fee Award and Cost Award out of the Gross Settlement Fund. The Settlement Administrator may purchase an annuity to utilize US treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. IRS Forms 1099 will be issued by the Settlement Administrator to Class Counsel with respect to these payments. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Fee and Cost Awards. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendant nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA and will be distributed to Participating Class Members.
3. **To the Responsible Tax Authorities.** The Settlement Administrator will withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes. The Settlement Administrator will submit Defendant's

portion of payroll withholding tax calculation to Defendant for additional funding and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities.

- 4. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$7,500. This will be paid out of the Qualified Settlement Fund. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and will be distributed to Participating Class Members.
- 5. To Participating Class Members.** The Settlement Administrator will pay each Participating Class Member an Individual Settlement Share from the NSA.
 - a. Individual Settlement Share Calculation.** The Individual Settlement Share is calculated based on each Participating Class Member's pro rata share of the Net Settlement Amount based on workweeks during the Class Period as follows: (i) the number of weeks he or she worked as a hourly-paid or non-exempt employee during the Class Period, divided by (ii) the total number of weeks worked by all Participating Class Members collectively during the Class Period, which is then multiplied by the Net Settlement Amount less the \$51,709 already paid to certain Class Members as part of the *Pick-Up Stix* settlement campaign. The Settlement Administrator will use the Class Data to calculate the number of workweeks worked by each Class Member based on their dates of employment for purposes of this calculation.
 - b. Tax Treatment for Individual Settlement Shares.** Each Participating Class Member's Individual Settlement Share will be apportioned as follows: 20% wages and 80% interest, penalties, and reimbursements. The portion paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-4 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. The employees' share of payroll tax withholdings shall be withheld from each persons' Individual Settlement Share. Participating Class Members will be

responsible for the payment of any taxes and penalties assessed on the Individual Settlement Shares and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Shares.

6. To Eligible Aggrieved Employees. The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods he or she was employed during the PAGA Period.

a. Individual PAGA Payment Calculation. The Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee's pro rata share of the PAGA Payment allocated to the Eligible Aggrieved Employees based on pay periods during the PAGA Period as follows: (i) the number of pay periods he or she worked as a hourly-paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of pay periods worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of periods worked by each Eligible Aggrieved Employee based on their dates of employment for purposes of this calculation.

b. Tax Treatment for Individual PAGA Payments. Each Eligible Aggrieved Employee's Individual PAGA Payments will be apportioned as 100% penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments.

G. Appointment of Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to the Class Members; keeping track of any objections or requests for exclusion from Class Members; performing skip traces and re-mailing Class Notices and Individual Settlement Shares to Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's Individual Settlement Share; calculating Eligible Aggrieved Employees' Individual PAGA Payment; providing weekly status reports to Defendant's Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence

declaration for submission to the Court prior to the Final Approval hearing; mailing Individual Settlement Shares to Participating Class Members; mailing Individual PAGA Payments to Eligible Aggrieved Employees; mailing the portion of the PAGA Payment due to the LWDA to the LWDA; distributing the Attorney Fee Award and Cost Award to Class Counsel; printing and providing Class Members, Eligible Aggrieved Employees and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Superior Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to the California State Controller in accordance with California Unclaimed Property Law, including the administration of related tax reimbursements; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Simpluris, Inc. or otherwise have a relationship with Simpluris, Inc. that could create a conflict of interest.

H. CIRCULAR 230 DISCLAIMER. Each Party to this Agreement (for purposes of this section, the “Acknowledging Party” and each Party to this Agreement other than the Acknowledging Party, an “Other Party”) acknowledges and agrees that:

- (1) No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of U.S. Treasury Dept. Circular 230 (31 C.F.R. Part 10, as amended);
- (2) The Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon the recommendation of any Other Party or any attorney or advisor to any Other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any Other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and
- (3) No attorney or advisor to any Other Party has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

I. Procedure for Approving Settlement.

1. Motion for Preliminary Approval and Conditional Certification.

- a. Plaintiff will move for an order conditionally certifying the Class for settlement purposes only, giving Preliminary Approval of the Settlement, setting a date for the Final Approval hearing, and approving the Class Notice and Exclusion Form.

- b. At the Preliminary Approval hearing, Plaintiff and Defendant will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- c. Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement with prejudice, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement shall not operate to terminate or cancel this Settlement Agreement.

2. Notice to Class Members. After the Court enters its Preliminary Approval Order, every Class Member will be provided with the Class Notice in accordance with the following procedure:

- a. Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Class Data to the Settlement Administrator.
- b. Upon receipt of the Class Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. The Settlement Administrator shall maintain the Class Data as private and confidential and take reasonable and necessary precautions to maintain the confidentiality of the Class Data. The Settlement Administrator shall not distribute or use the Class Data or any information contained therein for any purpose other than to administer this Settlement. This confidentiality provision shall not prohibit Class Counsel from effectuating the terms of this settlement.

- c. Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail.
- d. If a Class Notice is returned because of an incorrect address, within ten (10) days from receipt of the returned Class Notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records the date and address of each re-mailing. Those Class Members who receive a re-mailed Class Notice, whether by skip-trace or forwarded mail, will have an additional ten (10) days to postmark an Exclusion Form, or file and serve an objection to the Settlement, or dispute the information provided in their Class Notice. The Settlement Administrator shall mark on the envelope whether the Class Notice is a re-mailed notice.
- e. Class Members may dispute the information provided in their Class Notice, but must do so in writing, via first class mail, and it must be postmarked by the Response Deadline. To the extent Class Members dispute the number of weeks to which they have been credited or the amount of their Individual Settlement Share, Class Members must produce evidence to the Settlement Administrator showing that such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's records will be presumed determinative. However, if a Class Member produces evidence to the contrary, the Parties will evaluate the evidence submitted by the Class Member and will make the final decision as to the number of eligible weeks that should be applied and/or the Individual Settlement Share to which the Class Member may be entitled.

- f. If any Exclusion Form received is incomplete or deficient, the Settlement Administrator shall send a letter informing the Class Member of the deficiency and allow fourteen (14) days to cure the deficiency. If after the cure period the Exclusion Form is not cured, it will be determined that the Class Member did not exclude himself or herself from the Settlement and will be bound by the Settlement.
- g. The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendant's Counsel of the number of Notice Packets mailed, the number of Notice Packets returned as undeliverable, the number of Notice Packets re-mailed, and the number of Exclusion Forms received.
- h. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel no later than ten (10) calendar days before the Final Approval hearing. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

3. Objections to Settlement.

- a. **Class Notice.** The Class Notice will provide that the Class Members who wish to object to the Settlement may do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline.
- b. **Format.** Any written objections shall state: (a) the objecting person's full name, address, and telephone number; (b) the words "Notice of Objection" or "Formal Objection;" (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.
- c. **Objector Appearances.** Participating Class Members may (though are not required to) appear at the Final Approval hearing, either in person or through the objector's own counsel. The

failure to file and serve a written objection does not waive a Participating Class Member's right to appear at and make an oral objection at the Final Approval hearing.

4. Request for Exclusion from the Settlement ("Opt-Out").

- a. Class Notice.** The Class Notice will provide that Class Members who wish to exclude themselves from the class action Settlement must mail to the Settlement Administrator an Exclusion Form. The written request for exclusion must: (a) include the Class Member's name, address, and last four digits of the social security number; (b) be addressed to the Settlement Administrator; (c) be signed by the Class Member; and (d) be postmarked no later than the Response Deadline.
- b. No Opt Out From PAGA.** Eligible Aggrieved Employees will not be able to exclude themselves from receiving their portion of the PAGA Payment. The Class Notice will inform Eligible Aggrieved Employees that they cannot opt out of the PAGA portion of the settlement and explain that they will not be permitted to pursue any action under PAGA against the Released Parties for any claim that arose during the PAGA Period, even if they elect to Opt-Out of the class action Settlement.
- c. Validity and Effect.** Any Class Member who returns a timely, valid, and executed Exclusion Form will not participate in or be bound by the Settlement and Judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely Exclusion Form will be included in the Settlement, will receive an Individual Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement.
- d. Report.** No later than seven (7) calendar days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

- e. **Defendant's Option to Terminate.** If more than five percent (5%) of the Class Members submit Exclusion Forms, Defendant, at its sole option, may withdraw from the Settlement and this Agreement is null and void.

5. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

6. Motion for Final Approval.

- a. Class Counsel will file unopposed motions and memoranda in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorney Fee Award; (2) the Cost Award; (3) Administrative Costs; (4) the Class Representative Enhancement; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Claims of the Participating Class Members and the PAGA Released Claims of the Eligible Aggrieved Employees.
- b. If the Court denies Final Approval of the Settlement with prejudice, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement, the Attorney Fee Award, and/or the Cost Award, will not constitute a material modification to the Settlement within the meaning of this paragraph.
- c. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Class Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-Judgment

matters as may be appropriate under Court rules and applicable law.

7. **Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount.
8. **Disbursement of Settlement Shares and Payments.** Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Superior Court's Final Approval Order and Judgment. The maximum amount Defendant can be required to pay under this Settlement for any purpose is the Gross Settlement Amount. The Settlement Administrator shall keep Defendant's Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendant's Counsel and Class Counsel. No person shall have any claim against Defendant, Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.
 - a. **Funding the Settlement:** No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit One Hundred Seventy Thousand Six Hundred Fifty-Six Dollars (\$170,656) needed to pay the entire GSA by wiring the funds to the Settlement Administrator. Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Shares.
 - b. **Disbursement:** Within fourteen (14) calendar days after the deadline to Fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment, and the Administration Costs. The Settlement Administrator will forward a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. After such payment, Defendant shall have no liability for PAGA claims by or on behalf of Eligible Aggrieved Employees during

the PAGA Time Period, which are released under this Agreement.

- c. **QSF:** The Parties agree that the QSF is intended to be a “Qualified Settlement Fund” under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

- 9. **Uncashed Checks.** Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. If any checks are returned as undeliverable and without a forwarding address, the Settlement Administrator will conduct a skip trace search to find the most up to date mailing address and re-mail the checks promptly. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment (as applicable) to the California State Controller’s Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA Payment available to him or her per the applicable claim procedure to request that money from the State of California.
- 10. **Final Report by Settlement Administrator.** Within ten (10) calendar 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.
- 11. **Defendant’s Legal Fees.** Defendant is responsible for paying for all of Defendant’s own legal fees, costs, and expenses incurred in this Class Action outside of the Gross Settlement Fund.

- J. Release of Claims.** As of the Effective Final Settlement Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period.
- K. PAGA Release.** As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly is barred from bringing for the PAGA Released Claims during the PAGA Period. The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion.
- L. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiff in an amount not to exceed Seven Thousand, Five Hundred Dollars and No Cents (\$10,000), in recognition of his work and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff hereby provides a general release of claims for himself and his spouse, heirs, successors and assigns, and forever releases, remises, and discharges the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through the date of the Court grants Preliminary Approval, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to her employment with Defendant or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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.

The foregoing release is intended to be as broad as the Parties can possibly create and includes but is not limited to any liability whatsoever:

- which arises directly or indirectly out of or is in any manner related to Plaintiff's employment by Defendant;
- which arises directly or indirectly out of or is in any manner related to the causes of action or injuries or damages alleged in the Class Action; or

- which arises directly or indirectly out of or is in any manner related to any of the matters, occurrences or transactions which were raised or could have been raised in the Class Action, including without limitation, any and all claims for compensatory, economic, non-economic, punitive or other damages.

If any claim is not subject to release, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Defendant or any of the other Released Parties identified in this Settlement Agreement is a party.

M. Miscellaneous Terms

- 1. No Admission of Liability.** Defendant makes no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendant reserves the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendant denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Class and PAGA Claim, or that but for the Settlement, a Class should be certified in the Class Action or that the PAGA Claim could proceed on a representative basis. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant of liability or wrongdoing. This Settlement and Plaintiff's and Defendant's willingness to settle the Class and PAGA Claim will have no bearing on, and will not be admissible in connection with, any litigation, administrative proceeding or other special proceeding (other than solely in connection with this Settlement).
- 2. No Effect on Employee Benefits.** The Class Representative Enhancement Payments, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff, Participating Class Members or Eligible Aggrieved Employees. The Parties agree that any Class Representative Enhancement, Individual Settlement Shares and/or Individual PAGA Payments paid to Plaintiff, Participating Class Members and/or the Eligible Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's, Participating Class Members' or Eligible Aggrieved Employees' previously credited hours of service or other

eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant.

- 3. Publicity.** Class Counsel and Plaintiff agree to discuss the terms of this Settlement only in declarations submitted to a court to establish Class Counsel's adequacy to serve as class counsel, in declarations submitted to a court in support of motions for preliminary approval, Final Approval, for attorneys' fees/costs, and any other pleading filed with the Court in conjunction with the Settlement, and in discussions with Class Members in the context of administering this Settlement until the Preliminary Approval Order is issued. Class Counsel and Plaintiff agree to decline to respond to any media inquiries concerning the Settlement.
- 4. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- 5. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendant's Counsel warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.
- 6. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- 7. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Class and PAGA Claim in abeyance, except such

proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.

- 8. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- 9. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- 10. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- 11. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- 12. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Class Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- 13. No Tax or Legal Advice.** The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Plaintiff, Class Counsel, Eligible Aggrieved Employees and Participating Class Members will assume any such tax obligations or consequences that may arise from any disbursements made under this Agreement, and that Plaintiff, Class Counsel, Eligible Aggrieved Employees and Participating Class Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any recipient of a disbursement under this agreement, such recipient assumes all responsibility for the payment of such taxes.
- 14. Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection

therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

15. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

16. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

17. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

Dated: ^{02/18/2021}_____, 2021

STEVEN DELCORSO



Dated: _____, 2021

WESTLAND TECHNOLOGIES, INC.

John Grizzard
President

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IV. EXECUTION BY PARTIES AND COUNSEL

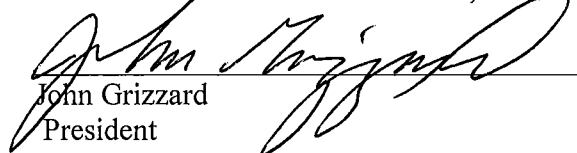
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Dated: _____, 2021

STEVEN DELCORSO

Dated: February 23, 2021

WESTLAND TECHNOLOGIES, INC.


John Grizzard
President

Dated: 2/23, 2021

JUSTICE LAW CORPORATION



Douglas Han, Esq.

Attorneys for Plaintiff Steven DelCorso, on behalf
of themselves and all others similarly situated

Dated: February 23, 2021

MUNDELL, ODLUM & HAWS, LLP



Karl N. Haws, Esq.

Jim C. Moore, Esq.

Attorneys for Westland Technologies, Inc.