

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq., SBN 272020

3 500 N. Central Ave., Suite 840

4 Glendale, California 91203

5 Telephone: (818) 484-6531

6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff ROBERT HERNANDEZ

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 **(UNLIMITED JURISDICTION)**

11 ROBERT HERNANDEZ,

12 Plaintiff,

13 vs.

14 COLLICUTT ENERGY SERVICES INC.;

15 STEVEN COLLICUTT; and DOES 1 to 25,

16 inclusive,

17 Defendants.

Case No.: 21STCV21135

18 **DECLARATION OF HAROUT**

19 **MESSRELIAN IN SUPPORT OF**

20 **STIPULATION FOR APPROVAL OF**

21 **PAGA SETTLEMENT AND RELEASE**

Department 61, Hon. Lynne M. Hobbs

22 **DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF**

23 **STIPULATION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE**

24 I, HAROUT MESSRELIAN, declare and state as follows:

25 1. I am an attorney duly licensed to practice before all the Courts of the State of

26 California. I am the attorney of record for Plaintiff ROBERT HERNANDEZ (individually,

27 "Hernandez" or "Plaintiff") in his lawsuit against Defendants COLLICUTT ENERGY SERVICES

28 INC. and STEVEN COLLICUTT (collectively "Defendant(s)").

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 350 civil actions and/or claims involving representative actions under the Private Attorneys General Act (“PAGA”) and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases – *Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Plaintiff had been an employee of Defendants, since late 2020, working as a Parts Technician. His employment ended on or around February 25, 2021. Throughout his employment tenure, Plaintiff was classified as an hourly, non-exempt employee.

5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”). On March 3, 2021, Plaintiff, on behalf of himself and Defendants’ other California non-exempt hourly employees (hereafter collectively the “Aggrieved Employees”) gave written

1 notice by electronic service to the California Labor and Workforce Development Agency
2 (“LWDA”) and via certified mail to Defendants of his claims against Defendants. In his notice
3 to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees that
4 Defendants (1) failed to compensate for all hours worked and to pay minimum wages (Labor
5 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code
6 Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide
7 meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during
8 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements
9 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor
10 Code Section 1174/1174.5); (8) failed to pay wages at the end of employment (Labor Code
11 section 203); (9) failed to reimburse business expenses (Labor Code Sections 2800, 2802); and
12 (10) failed to provide sick pay and Worker’s Compensation coverage (Labor Code sections
13 232, 246, 3700.5). Plaintiff filed his initial lawsuit on June 7, 2021 in the Superior Court for the
14 State of California, County of Los Angeles, Case No. 21STCV21135 with 13 causes of action
15 for penalties under the following legal theories: 1) Failure To Compensate For All Hours
16 Worked; 2) Failure To Pay Minimum Wages; 3) Failure To Pay Overtime; 4) Failure To
17 Provide Accurate Itemized Wage Statements; 5) Failure To Pay Wages When Employment
18 Ends; 6) Failure To Pay Wages Owed Every Pay Period; 7) Violation Of Labor Code § 558; 8)
19 Failure To Maintain Accurate Records; 9) Failure To Give Rest Breaks; 10) Failure To Give
20 Meal Breaks; 11) Private Attorneys General Act (PAGA); 12) Failure to Reimburse Business
21 Expenses; and 13) Violation of Business and Professions Code Section 17200.

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26 6. According to Defendants’ records, it has employed approximately 67
27 Aggrieved Employees from April 3, 2020 through July 16, 2023, and there are paychecks
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1 issued for a total of approximately 2,167 pay periods worked for that same time period.

2 7. On August 4, 2023, the Parties attended a full day mediation session with
3 experienced wage-and-hour mediator Eleanor Barr. At the mediation, the Parties agreed to settle
4 the entire action, including the Representative PAGA claim for violation of Labor Code § 2698,
5 *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery
6 regarding Defendants' policies, practices, operations, time and payroll information and other
7 topics. In advance of mediation, Defendants produced Plaintiff's personnel file, including time
8 and payroll data for Plaintiff and also produced pay information for all aggrieved employees in
9 the PAGA period. Through extensive arm's length negotiations at the mediation and only after
10 discovery and investigation were performed, the Parties agreed to settlement terms. Attached
11 as **Exhibit 1** to this Declaration is a true and accurate copy of the Settlement Agreement and the
12 PAGA notice that will be sent to the alleged aggrieved employees covered by the Settlement
13 Agreement
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16 8. The Parties conducted investigation of the facts and law both before and after
17 the lawsuit was filed. Counsel for the Parties have further investigated the applicable law as
18 applied to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor
19 Code violations claimed by Plaintiff. Based on their own independent investigations and
20 evaluations, the Parties and their respective counsel are of the opinion that the Settlement for
21 the consideration and on the terms set forth in this Stipulation are fair, reasonable and adequate
22 and are in the best interests of Plaintiff, the Aggrieved Employees, and Defendants in light of
23 all known facts and circumstances and the risks inherent in litigation, especially in this post-
24 pandemic era when most businesses are struggling to remain afloat, much less prosper and make
25 a large profit.
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1 9. The Parties further recognize that the issues presented in the Representative
2 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
3 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
4 and expense disproportionate to the maximum potential benefits, especially in light of the
5 current business climate.
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7 **III. FAIRNESS OF THE SETTLEMENT**

8 10. Plaintiff alleges that the strongest claims that Plaintiff can prove are that
9 Plaintiff and other Aggrieved Employees were not provided timely, uninterrupted meal breaks.
10 This is so because Defendants used a written timesheet system wherein employees filled in their
11 own time and simply put the total number of hours worked per day, including overtime, but did
12 NOT include the times wherein they took their meal periods. Since Defendant fully failed to keep
13 track of the *timing* of meal periods, Donohue v. AMN Services, LLC, 11 Cal. 5th 58, 77-78
14 (2021) is relevant (citing Brinker, 53 Cal. 4th at 1054) (meal period violations appearing on the
15 face of the time records creates a rebuttable presumption that the employer actually failed to
16 provide compliant meal periods). In terms of Plaintiff's representative claims for not receiving
17 rest breaks, Defendants do not have to keep track of rest periods on timecards and there would
18 be no evidence of rest period violations on paper, however, Plaintiff would still have arguments
19 in this regard and has factored the rest break issue in its exposure analysis in the following
20 paragraph. In terms of Plaintiff's other claims for minimum wage violations and failure to
21 compensate for all hours worked, no rounding issues were observed as employees actually kept
22 track of and submitted their own timesheets and there was no manipulation or change by the
23 company after the fact. Furthermore, any evidence of "off the clock" work would not appear in
24 any pay documents. Additionally, employees filled in their appropriate overtime hours and were
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1 paid as such. The other associated PAGA claims are derivative to the meal/rest break allegations
2 for which Defendants would not have additional liability for inaccurate pay stubs, failure to pay
3 all wages owed, failure to keep accurate payroll records, and failure to pay wages at the end of
4 employment.

5 11. Plaintiff contends that the civil penalty statutes applicable to the Representative
6 PAGA Claim are Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). *See*
7 Declaration of Harout Messrelian, ¶11. Under these civil penalty statutes, an employee who
8 suffers a Labor Code violation may be awarded a sum of money for each pay period in which he
9 or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award
10 of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory.
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12 12. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
13 maximum exposure of approximately \$216,700 for civil penalties for Plaintiff's strongest
14 disputed claims of failure to provide meal and rest periods. *See* Declaration of Harout Messrelian,
15 ¶12. Plaintiff's analysis, which Defendants vehemently dispute, attributed a 100% violation rate
16 for all 2,167 pay periods in the PAGA period due to the rebuttable presumption created by
17 Donahue as discussed earlier. As such, the maximum exposure for meal break violations would
18 be \$108,350, which is calculated as \$50 penalty multiplied by 2167 pay periods. Plaintiff
19 extrapolated a 50% violation rate for rest break violations on the basis that each party would have
20 a 50% chance of prevailing at trial on the rest period claim since there is no documentary evidence
21 of rest period violations. The rest period violation exposure would equate to \$108,350 (\$100
22 penalty per pay period multiplied by 1083.5 pay periods, which is 50% of the total pay periods
23 of 2,167 due to Plaintiff having a 50% chance of prevailing). Assuming that Plaintiff's
24 calculations and analysis are accurate, the maximum exposure of \$216,700 presumes that the
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1 Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory.

2 13. Moreover, Plaintiff is aware of no California state courts awarding Plaintiffs
3 multiple PAGA penalties for the same violation for the same pay period under different Labor
4 Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to “stack”
5 civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
6 extremely small sums to PAGA claimants in the past. In addition, Defendants would make an
7 argument under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d
8 Dist., Sept. 26, 2019) and other similar cases, which at the time of this settlement, held that meal
9 or rest period violations are not a predicate for civil penalties for improper wage statements and
10 untimely final wages under Labor Code secs.201-203, 226, 226.3, and 2699. Defendants also
11 adamantly dispute all of Plaintiff’s allegations in the operative Complaint.
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14 14. The source of penalties available is under PAGA, which allows employees to
15 seek civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
16 arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date
17 with substantial awards of civil penalties. There is a substantial risk that the Court could reduce
18 civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence of willful
19 and intentional conduct. The PAGA expressly counsels against such awards. *See Lab. Code* §
20 2699(e)(2) (“...a court may award a lesser amount than the maximum civil penalty amount
21 specified by this part if, based on the facts and circumstances of the particular case, to do
22 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”).
23 Further, although, class certification is not required for a PAGA claim, Defendants could contend
24 that Plaintiff should show that the PAGA claims are manageable.
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27 15. PAGA states a court has discretion to award a lesser amount than the maximum
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1 penalty. *See Lab. Code* § 2699(e)(2) (“...a court may award a lesser amount than the maximum
2 civil penalty amount specified by this part if, based on the facts and circumstances of the
3 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
4 or confiscatory.”); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
5 Cal.App.4th 1112, 1135 (reducing PAGA award). As alluded to above, there is a substantial risk
6 that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by
7 Plaintiff’s evidence of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30
8 Cal.App.5th 504 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial
9 court’s heavily discounted award of only \$5 per violation because it was within the Court’s
10 discretion to significantly reduce PAGA penalties even when there is a finding that a violation
11 of the California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in
12 excess of \$70 million and was successful in proving the PAGA claim during a bench trial.
13 However, the trial court reduced the total award after trial to only \$150,000 (30,000 violations x
14 \$5) and stated that this reduction was warranted because imposing the maximum penalty would
15 be “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
16 meal break obligations and because the Court found the violations were minimal. Defendants
17 would argue that the same reduction in PAGA penalties should be applied in this case. Applying
18 the same formula here and assuming there was one violation during each pay period, the award
19 of civil penalties could not exceed \$10,835.00 in PAGA penalties (2,167 violations x \$5). As
20 such, this Settlement is a great result based solely on the risk the Court chooses to apply the
21 *Carrington* formula. Thus, the chance of Plaintiff recovering a higher amount than the Gross
22 Settlement Amount is uncertain.

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27 16. Moreover, in a PAGA case the plaintiff must prove liability with respect to “each
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1 and every individual” through representative evidence – but without sacrificing the defendant’s
2 due process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal.
3 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v.*
4 *U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff is required to establish a violation of
5 the Labor Code in each pay period of each and every one of the approximately 67 employees. The
6 Court could find that this is an impractical task and require the Eligible Employees to bring
7 individual claims instead of a PAGA representative claim.
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9 17. The Parties further recognize that the issues presented in the Representative
10 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
11 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
12 and expense disproportionate to the maximum potential benefits to the Subject Employees and
13 Plaintiff from continued litigation, especially in the post-pandemic era where further and
14 extensive litigation may cause businesses to shut down, resulting in no monetary compensation
15 to Plaintiff, Plaintiff’s attorneys, other Aggrieved Employees, and the State of California.
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17 18. The settlement of the Representative PAGA Claim involves monetary relief to
18 all Aggrieved Employees, Plaintiff, his attorneys, and the State of California.
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20 19. Furthermore, Plaintiff recognizes that continued litigation presents significant
21 risks that support a significant downward departure from Plaintiff’s estimated civil penalties
22 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
23 compromise amount for these claims and is in the best interest of Plaintiff and Eligible
24 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
25 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
26 reasonable, adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of
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1 the current economic climate, and are the product of good faith, and informed arms-length
2 negotiations between the Parties consistent with public policy and fully comply with applicable
3 provisions of law.

4 20. Defendants agrees to pay \$90,000.00 toward the Settlement (the “Gross
5 Settlement Amount” or “GSA”) which will be distributed by Defendants as follows:
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- 7 a. \$30,000.00 (33 1/3% of the GSA) in attorneys’ fees to Messrelian Law Inc.;
- 8 b. \$7,706.91 in attorney litigation costs to Messrelian Law Inc.
- 9 c. \$6,000.00 in PAGA Settlement Administrator costs to CPT;
- 10 d. \$46,293.09 (the “Net Settlement Amount” or “NSA”) will be divided as
11 follows:
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- 13 i. \$34,719.82 (75% of “NSA”) to the LWDA, which represents civil
14 penalties payable to the LWDA under the Labor Code Private Attorneys
15 General Act (“PAGA”), Labor Code section 2698, *et seq.*; and
- 16 ii. \$11,573.27 (25% of NSA) (the “Aggrieved Employee Amount”) to the
17 Aggrieved Employees which represents civil penalties payable to the
18 Aggrieved Employees as compensation for civil penalties that are
allegedly owed on the Representative PAGA Claim for the period from
April 3, 2020 through Court approval.

19 ***Attorneys’ Fees and Costs***

20 21. I represent Plaintiff on a straight contingency basis. My request for \$30,000.00 in
21 attorney fees and \$7,706.91 in litigation costs is fair and reasonable. “Empirical studies show
22 that, regardless of whether the percentage method or the lodestar method is used, fee awards in
23 class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162
24 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D.
25 Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int’l Inc.* (Cal. Aug. 11,
26 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method
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1 for the calculation of attorneys' fees). This is also consistent with my experience in cases
2 involving PAGA claims. This award is justified here because I believe I achieved a strong result
3 for the Aggrieved Employees and the State while bearing the substantial burdens of contingency
4 representation.

5 22. The litigation costs expended to aid in the representation of the Aggrieved
6 Employees include the following: lawsuit filing fee of \$454.22, PAGA initial filing fee of
7 \$75.00, a mediation fee of \$6,500.00 (for Plaintiff's portion of the mediation); electronic filing
8 fees 36.30; Jury Fees \$161.39; Service of Process \$130.00; and expert data analysis fee of
9 \$350.00 for a total of \$7,706.91. All of these costs are documented and reasonably incurred.
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11 ***Plaintiff's Additional Released Claims***

12 23. Plaintiff entered into a confidential individual settlement agreement with
13 Defendants to settle his individual claims. As part of this confidential agreement, Plaintiff also
14 provided Defendants with a general release of all claims, whether known or unknown, including
15 unknown claims covered by Civil Code Section 1542.
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17 ***Settlement Administration Costs***

18 24. With regard to the settlement administration costs provision, it is reasonable. CPT's
19 administrator bid has been attached as **Exhibit 2** to this declaration.
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I declare under the penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.


HAROUT MESSRELIAN,
Declarant

EXHIBIT 1

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement (“Settlement and Release Agreement” or “Settlement”) is subject to the Court’s review and approval and is made and entered into by and between Plaintiff Robert Hernandez, on behalf of himself, similarly-situated employees and the State of California, and Defendants Collicutt Energy Services, Inc. and Steven Collicutt (“Collicutt” or “Defendants”).

A. Definitions.

1. “Action” means and refers to *Hernandez, et al. v. Collicutt Energy Services, Inc., et al.*, California Superior Court for the County of Los Angeles, Case No. 21STCV21135.

2. “Covered Employees” means and includes all persons employed by Collicutt California as a non-exempt employee at any time during the period from April 3, 2020 through the date the Court approves the Settlement. Covered Employees will not include any person who previously settled or released any claims covered by this Settlement and Release Agreement. Covered Employees are not eligible to opt out of the Settlement and Release Agreement.

3. “Covered Employees’ Settlement Proceeds” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Covered Employees as payment of civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”).

4. “Covered Period” means and refers to the period from April 3, 2020 through the date the Court approves the Settlement.

5. “Court” means and refers to the California Superior Court, County of Los Angeles.

6. “Defendants” means and refers to Collicutt Energy Services, Inc. and Steven Collicutt.

7. “Defendants’ Counsel” means and refers to Cary Palmer of Jackson Lewis P.C.

8. “Effective Date” means and refers to the date the Court enters its Final Order approving the Settlement and Release Agreement.

9. “Eligible Pay Periods” means and refers to the total number of pay periods during the Covered Period in which a Covered Employee worked for Defendants in California.

10. “Final Order” means and refers to the order of the Court approving the Settlement and Release Agreement.

11. “LWDA Settlement Proceeds” means and refers to the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency (“LWDA”).

12. "Net Settlement Amount" means and refers to the Settlement Amount less the Plaintiff's Counsel's attorneys' fees and costs, the Plaintiff's Individual Award, and the Settlement Administrator's costs, as approved by the Court.

13. "Notice" means and refers to the notice that will be sent to the Covered Employees after the Court's entry of its Final Order approving the Settlement and Release Agreement, and shall be similar in form and content to the notice attached hereto as Exhibit A.

14. "Parties" means and refers to the Plaintiff and Defendants, collectively.

15. "Plaintiff" means and refers to Robert Hernandez.

16. "Plaintiff's Counsel" means and refers to Harout Messrellian of Messrellian Law, Inc.

17. "Settlement Administrator" means and refers to CPT Group, Inc., the entity that will administer the terms of the Settlement and Release Agreement.

18. "Settlement Administrator Costs" means and refers to the fees and costs incurred or charged by the Settlement Administrator in connection with its duties under this Settlement and Release Agreement, including but not limited to fees and costs associated with: (1) performing a National Change of Address search for the Covered Employees, (2) establishing and maintaining the Qualified Settlement Fund for the disbursement of the Settlement Amount, (3) computing the amount of the settlement and other payments to be made from the Settlement Amount; (4) processing and mailing the settlement and other payments, including the notice to the Covered Employees, under this Settlement and Release Agreement, (5) printing and providing Plaintiff, Plaintiff's Counsel, and the Covered Employees with IRS 1099 forms as required by this Settlement and Release Agreement and applicable law, (6) preparing, issuing, and filing any tax returns and information returns and any other filings required by any governmental taxing authority or other governmental agency, and (7) such other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.

19. "Settlement Amount" means and refers to the maximum settlement amount of Ninety Thousand Dollars (\$90,000.00) that Defendants will pay under the Settlement and Release Agreement.

20. "Released Parties" as referenced herein and as released in the Settlement and Release Agreement shall collectively mean: (i) Collicutt Energy Services, Inc. and Steven Collicutt ("Defendants"); (ii) Defendants' past and present (and regardless of tier) parents, predecessors, successors, subsidiaries, related entities and affiliates, (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, managers, agents, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

B. General.

1. On June 7, 2021, Plaintiff, on behalf of the State of California and allegedly aggrieved employees, asserted claims under PAGA in *Robert Hernandez v. Collicutt Energy Services, Inc., et al.*, California Superior Court for the County of Los Angeles, Case No. 21STCV21135. On March 22, 2022, Plaintiff filed a First Amended Complaint. The operative First Amended Complaint alleges thirteen causes of action, including the following: (1) failure to compensate for all hours worked; (2) failure to pay minimum wages; (3) failure to pay overtime; (4) failure to provide accurate itemized wage statements; (5) failure to pay wages when employment ends; (6) failure to pay wages owed every pay period; (7) violation of Labor Code Section 558; (8) Failure to maintain accurate records; (9) failure to provide meal breaks; (10) failure to provide rest breaks; (11) private attorneys general act ("PAGA"), (12) failure to reimburse business expenses; and (13) violation of Business and Professions Code Section 17200, et seq. (collectively, the "Operative Claims").

2. Defendants deny Plaintiff's claims and allegations, deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, and deny that Plaintiff can proceed with his claims on a representative basis.

3. The Parties have conducted a thorough investigation of the Action and litigated the issues vigorously. Litigation efforts included, without limitation, exchanging data and documents related to the Operative Claims; and participating in a full-day mediation session. Settlement was reached only as a result of a mediator's proposal. Based on the foregoing and on its own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement set forth in this Settlement and Release Agreement is fair, reasonable, and adequate and is in the best interest of the Plaintiff, the LWDA, and the Covered Employees in light of all known facts and circumstances, including the risk of significant delay, the uncertainty associated with litigation, the various defenses asserted by Defendants, and the numerous potential appellate issues. Defendants and Defendants' Counsel also are of the opinion that the settlement set forth in this Settlement and Release Agreement is fair, reasonable, and adequate and in the best interest of the Plaintiff, the LWDA, and the Covered Employees.

4. Neither the Parties' Settlement, nor this Settlement and Release Agreement, nor the acts to be performed or the orders to be entered pursuant to the terms of this Settlement and Release Agreement, shall be construed as an admission by Defendants of any wrongdoing, any violation of any statute or law, or any liability arising from the claims or allegations in the Action. Defendants have entered into this Settlement and Release Agreement solely for the purpose of compromising highly-disputed claims.

C. Terms of Settlement.

1. Subject to the Court's review and approval, the financial terms of the settlement are as follows:

(a) **Settlement Amount:** Defendants will pay a maximum of Ninety Thousand Dollars (\$90,000.00) ("Settlement Amount"). This Settlement Amount is inclusive of all settlement payments to the State of California and the Covered Employees, the Individual Award to Plaintiff, the Fee and Cost Award to Plaintiff's Counsel, and the Settlement

Administrator Costs. Defendants will have no other monetary obligations under this Settlement and Release Agreement and no portion of the Settlement Amount will revert to Defendants.

(b) **Potential Escalator:** At the time of mediation, Defendants estimated the allegedly aggrieved employees worked an estimated 2,167 pay periods from April 3, 2020 through July 16, 2023. If the event that the total pay periods from April 3, 2020 through July 16, 2023 is determined to be more than 15% higher than the estimated 2,167 pay periods, the Settlement Amount will increase pro rata based on the percentage of pay periods over that 15% threshold. For example, if the number of pay periods from April 3, 2020 through July 16, 2023 is 16% higher than an estimated 2,167 pay periods, the Settlement Amount will increase by 1%, and so on. In the event that the escalator is triggered because the number of pay periods is more than 15% greater than an estimated 2,167 pay periods from April 3, 2020 through July 16, 2023, Defendants have the right to elect between increasing the Settlement Amount by the agreed-upon escalator, or alternatively, capping the number of pay periods by adjusting the Covered Period to a point in time so that the escalator clause is not triggered and thereby not increasing the Settlement Amount.

(c) **Settlement Administrator Costs:** The Settlement Administrator Costs shall be paid from the Settlement Amount.

(d) **Fee and Cost Award:** Plaintiff's Counsel will be paid a maximum of Thirty Thousand Dollars and Zero Cents (\$30,000.00) for their attorneys' fees, and up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for attorneys' costs. Defendants agree not to oppose Plaintiff's Counsel's request for these attorneys' fees and costs. The Fee and Cost Award will be paid out of the Settlement Amount. Plaintiff's Counsel will be issued an IRS Form 1099 in connection with the payment of the Fee and Cost Award. Plaintiff's Counsel shall be solely responsible for paying any and all applicable taxes on this payment.

(e) **Allocation of Net Settlement Amount:** After deducting the amounts specified in Sub-Paragraphs 24(b) [Individual Award to Plaintiff], 24(c) [Settlement Administrator Cost], and 24(d) [Fee and Cost Award] from the Settlement Amount, the balance remaining will form the Net Settlement Amount and will be paid to the Covered Employees and the LWDA as follows:

(1) **Covered Employees' Settlement Proceeds.** Twenty-five percent (25%) of the Net Settlement Amount will be paid to the Covered Employees for pay periods worked during the Covered Period ("Covered Employees' Settlement Proceeds"). Defendants or the Settlement Administrator will calculate the total number of Eligible Pay Periods worked by all Covered Employees during the Covered Period. The Settlement Administrator will divide the Covered Employees' Settlement Proceeds by the total number of Eligible Pay Periods to determine the share amount payable per member so that each Covered Employee receives a *pro rata* share of the Covered Employees' Settlement Proceeds based on the number of Eligible Pay Periods worked by the individual member;

(2) Seventy-five percent (75%) of the Net Settlement Amount will fund the LWDA Settlement Proceeds and will be paid by the Settlement Administrator to the LWDA in accordance with Paragraph 36, below.

D. Covered Claims Released by Covered Employees.

1. The claims and causes of action released by the Covered Employees include, to the maximum extent permitted by law, all claims and causes of action against Defendants and the Released Parties for civil penalties, arising out of or reasonably related to the factual allegations in the Action operative complaint and/or Plaintiff's letter to the California Labor and Workforce Development Agency for the entirety of the Covered Period. Such released claims and causes of action include, but are not limited to the Covered Claims and Labor Code sections 200, 201, 202, 203, 204, 204b, 210, 218.5, 218.6, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1171, 1173, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, et seq., 2699, 2699.3, 3700.5, California Industrial Welfare Commission Wage Order 4-2001, Wage Order 1-2001 and all other Wage Orders, and California Code of Regulations, Title 8, Section 11040 and 11010, and all claims and causes of action for interest, costs, expenses and attorney's fees alleged in the Action ("Covered Claims") during the Covered Period. Each Covered Employee will be deemed to have made the foregoing release as if by manually signing it.

E. Released Parties.

1. "Released Parties" as referenced herein and as released in the Settlement and Release Agreement shall collectively mean: (i) Collicutt Energy Services, Inc. and Steven Collicutt ("Collicutt"); (ii) Collicutt's past and present (and regardless of tier) parents, predecessors, successors, subsidiaries, related entities and affiliates, (iii) the past and present board members, directors, officers, agents, employees, attorneys, insurers, members, managers, agents, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

F. Settlement Approval and Implemental Procedures.

1. Plaintiff's Counsel will prepare a motion and proposed order for filing with the Court within Twenty-One (21) calendar days of execution this Settlement and Release Agreement, requesting the Court to approve this Settlement and Release Agreement. At least three (3) calendar days before filing the motion and proposed order with the Court, Plaintiff's Counsel will provide Defendants' Counsel with a draft of the motion and proposed order for Defendants' Counsel's review and comment.

2. Plaintiff's Counsel shall thereafter file the motion and proposed order with the Court. In accordance with Labor Code § 2699(1)(2), Plaintiff's Counsel shall also submit the motion (including notice of the hearing date) and this Settlement and Release Agreement to the LWDA on the same day it files the motion and proposed order. Defendants will not oppose Plaintiff's motion and proposed order.

3. On the Effective Date, all Covered Employees will: (i) be bound by the terms and conditions of the Settlement and Release Agreement; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of this Settlement and Release Agreement and the Court's Final Order; and (iii) be entitled to receive a share of the Net Settlement Amount, as set forth herein.

4. Within fifteen (15) days after the Effective Date, Defendants will provide the Settlement Administrator a confidential list setting forth the name, last known addresses, Social Security number, and number of Eligible Pay Periods for each Covered Employee. The Settlement Administrator will perform a National Change of Address search on all the Covered Employees to update the addresses of the Covered Employees.

5. Within thirty (30) days after the Effective Date, Defendants shall wire transfer the Settlement Amount to the Settlement Administrator, who will deposit the funds into the bank account of the Qualified Settlement Fund established by the Settlement Administrator for purposes of this settlement. All amounts to be paid to the Plaintiff, Covered Employees, Plaintiff's Counsel, Settlement Administrator, and LWDA shall be paid from this Qualified Settlement Fund.

6. After the Settlement Administrator deducts the amount of Plaintiff's Counsel's approved Fee and Cost Award, Plaintiff's approved Individual Award, and the Settlement Administrator Costs from the Settlement Amount, the remaining balance will constitute the Net Settlement Amount, which will be distributed as set forth herein.

7. Within forty-five (45) days after the Effective Date, the Settlement Administrator shall: (i) mail the settlement checks to the Covered Employees; (ii) mail a check for the LWDA Settlement Proceeds to the LWDA; (iii) mail the check for the approved Individual Award to Plaintiff; and (iv) pay Plaintiff's Counsel's approved Fee and Cost Award in accordance with any wire transfer instructions from Plaintiff's Counsel. The Individual Awards mailed to each Covered Employee will be accompanied by a Notice (similar in form and content to the sample form set forth in Exhibit A) explaining the Covered Employee's payment and the deadline to cash his/her settlement check.

8. The Covered Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Covered Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. In such event, the Covered Employee will be deemed to have irrevocably waived any right in or claim to his/her share, except that the Covered Employee may seek to claim the funds from the California Department of Industrial Relations ("DIR") Unclaimed Property Fund. The release nevertheless will be binding upon all Covered Employees, including those who do not cash their checks within the 180-day period. Any funds remaining in the Settlement Administrator's Qualified Settlement Fund established for the purpose of the Settlement and Release Agreement as a result of a failure to timely cash a settlement check shall be paid to the DIR Unclaimed Property Fund in the name of the Covered Employee who did not cash his/her check. The Settlement Administrator, Defendants, Defendants' Counsel, Plaintiff, and Plaintiff's Counsel will not have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks, and will not have any duty to seek any funds from the DIR Unclaimed Property Fund.

9. The Covered Employees' share of the Net Settlement Amount will be treated as payments in settlement of non-wage (civil penalty) claims and, to the extent necessary, will be reported on IRS 1099 forms.

G. Miscellaneous Provisions.

1. **Voiding the Agreement:** If for any reason the Court does not approve this Settlement and Release Agreement, the parties shall have a period of sixty (60) days (the "Grace Period") in which to provide any additional briefing or information requested by the Court, and/or to file a new, supplemental, or renewed request for settlement approval with the Court, and/or, in each Party's sole discretion, to revise this Settlement and Release Agreement. If the parties do not file anything with the Court during such a Grace Period, this Settlement and Release Agreement shall be considered void *ab initio* and shall be of no force and effect whatsoever and shall not be referred to or used for any purpose whatsoever. If the Settlement and Release Agreement is approved by Court, and challenges to the Court's approval are not withdrawn on the record at the hearing, the Settlement and Release Agreement will remain in effect and binding on the Parties, and the Action and all related actions will remain stayed, pending final resolution of any challenges or appeals.

2. **Waiver:** The waiver by one Party of any breach of this Settlement and Release Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement and Release Agreement.

3. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement and Release Agreement and to bind the Parties hereto to the terms and conditions hereof.

4. **Mutual Full Cooperation:** The Parties will fully cooperate with each other to accomplish the terms of this Settlement and Release Agreement, including but not limited to executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement and Release Agreement. The Parties to this Settlement and Release Agreement shall use their best efforts, including all efforts contemplated by this Settlement and Release Agreement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate this Settlement and Release Agreement and the terms set forth herein.

5. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have 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 released and discharged by this Settlement and Release Agreement.

6. **Confidentiality:** Plaintiff agrees to maintain the confidentiality of this Settlement and Release Agreement until such time as Plaintiff's Counsel files with the Court its motion and proposed order requesting the Court to approve this Settlement and Release Agreement. Following the filing of such motion and proposed order, Plaintiff further agrees not to publicize or comment on, either directly or indirectly, either in specific or as to general content, this Settlement and Release Agreement, the Final Order, or any other aspect of this settlement, with the public generally or with present or former employees of Defendants, except and only to acknowledge, if asked, that "this matter has been resolved." Additionally, following the filing of such motion and proposed order, Plaintiff's Counsel further agrees not to contact any member of the print, electronic, or other media to discuss the Action or this Settlement and Release

Agreement, and not to respond substantively to any request for comment from any member of the print, electronic, or other media with regard to this Action or this Settlement and Release Agreement. Plaintiff and Plaintiff's Counsel shall not publish or publicize the Action or this Settlement and Release Agreement on any website or social media platform.

7. **Judgment:** Plaintiff's request to the Court to approve this Settlement and Release Agreement will include a proposed order that judgment be entered according to the terms of the Settlement and Release Agreement.

8. **Binding Settlement:** This Settlement and Release Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement and/or interpret or enforce the Settlement and Release Agreement.

9. **Enforcement Actions:** Except as otherwise provided in this Settlement and Release Agreement, in the event that a Party to the Settlement and Release Agreement institutes any legal action or other proceeding against the other Party to enforce the provisions of this Settlement and Release Agreement or to declare rights and/or obligations under this Settlement and Release Agreement, the prevailing Party shall be entitled to recover from the other Party its/her reasonable attorneys' fees and costs incurred in connection with any action or proceeding.

10. **Notices:** Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Harout Messrellian
Messrellian Law, Inc.
500 N. Central Avenue, Suite 840
Glendale, CA 91203
Email: hm@messrellianlaw.com

To Defendants:

Cary G. Palmer
Jackson Lewis, P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814
Email: Cary.Palmer@jacksonlewis.com

11. **Construction:** The terms and conditions of this Settlement and Release Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Settlement and Release Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her/its counsel participated in the drafting of this Settlement and Release Agreement.

12. **Captions and Interpretations:** Paragraph/section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement and Release Agreement or any provision thereof. Each term of this Settlement and Release Agreement is contractual and not merely a recital.

13. **Modification:** The Settlement and Release Agreement may not be changed, altered, or modified, except in writing signed by the Parties hereto and approved by the Court. This Settlement and Release Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto. Notwithstanding the foregoing, administrative changes reasonably necessary to facilitate implementation of the Settlement and Release Agreement may be confirmed in a writing approved by counsel for both Parties (including a writing approved through the exchange of email messages) without the signatures of the Parties themselves or the approval of the Court.

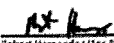
14. **Choice of Law and Venue:** This Settlement and Release Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules. Any legal action or other proceeding to enforce or interpret the provisions of this Settlement and Release Agreement or to declare rights and/or obligations under this Settlement and Release Agreement shall be filed in California Superior Court, County of Los Angeles, which shall have the exclusive jurisdiction to hear any such legal action or other proceeding.

15. **Integration Clause:** This Settlement and Release Agreement contains the entire agreement between the Parties relating to the settlement and the transactions contemplated herein, and all earlier or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's counsel, are merged herein. No rights hereunder may be waived except in writing.

16. **Binding On Assigns:** This Settlement and Release Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

17. **Counterparts:** The Settlement and Release Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement and Release Agreement, which shall be binding upon and effective as to all Parties. Signed copies of this Settlement and Release Agreement can be delivered manually, through a third-party delivered company, or electronically.

Dated: Apr 8, 2024

By: 
Robert Hernandez (Age 8, 2024 17-01 PDF)
Robert Hernandez

Dated: 04-11-24

By: David Taylor
David Taylor

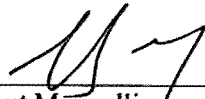
Vice President of Operations,
Collicutt Energy Services, Inc.

Dated: 4-11-24

By: 
Steven Collicutt

Approved as to Form:

Dated: 4-8-24

By: 
Harout Messrellian
Messrellian Law, Inc.
Attorneys for Robert Hernandez

Dated: April 29, 2024

By: 
Cary G. Palmer
Jackson Lewis, P.C.
Attorneys for Collicutt Energy
Services, Inc. and Steven Collicutt

**Re: Payment from Hernandez v. Collicutt Energy Services, Inc.,
California Superior Court for the County of Los Angeles, Case No. 21STCV21135.**

Date: [REDACTED]/[REDACTED]/2024

SIMID
Name
Address

Dear **Name**:

Please find the enclosed settlement award check payable to you. This is your settlement award from settlement of the action entitled Robert Hernandez v. Collicutt Energy Services, Inc., California Superior Court for the County of Los Angeles, Case No. 21STCV21135, pending in the Superior Court of the State of California for the County of Los Angeles ("Action").

The Action was filed against Collicutt Energy Services, Inc. ("Collicutt"), and includes a claim for penalties under California Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA"). The Action was brought by Plaintiff Robert Hernandez ("Plaintiff"), a former employee of Collicutt, on behalf of the State of California and other allegedly aggrieved employees. You are one of the Covered Employees in the Settlement.

Plaintiff alleged Collicutt owed civil penalties under PAGA for alleged violations of the California Labor Code. Plaintiff, on behalf of the State of California and other allegedly aggrieved employees, and Collicutt have reached a Settlement. The Court has approved the Settlement, including penalties to be paid under the Settlement. Seventy-five percent (75%) of the penalties will be paid to the State of California's Labor and Workforce Development Agency. The remaining twenty-five percent (25%) of the penalties will be paid on a *pro rata* basis to Covered Employees who worked during the Covered Period. In agreeing to the Settlement, Collicutt does not admit any wrongdoing or liability for any alleged violations of the California Labor Code.

Your settlement award check represents your share of Settlement. The check will remain valid for 180 days from the date of issuance. If you do not cash your check within 180 days of issuance, the funds will be deposited by the Settlement Administrator with the DIR Unclaimed Property Fund in your name. If you are still employed by Collicutt, your settlement award will not affect your employment in any way. You are encouraged to cash your settlement award check.

While you are not a named party to the Action, you and the State of California are bound by the Settlement approved by the Court, including the release contained in the Settlement. The release covers alleged penalties under PAGA. The release includes all claims under PAGA alleged in the Action, including claims for civil penalties, attorneys' fees, costs, or interest under PAGA for alleged violations of Labor Code sections 200, 201, 202, 203, 204, 204b, 210, 218.5, 218.6, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1171, 1173, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2698, *et seq.*, 2699, 2699.3, 3700.5, California Industrial Welfare Commission Wage Order 4-2001, Wage Order 1-2001 and all other Wage Orders, and California Code of Regulations, Title 8, Section 11040 and 11010, and all claims and causes of action for interest, costs, expenses and attorney's fees ("Covered Claims"), during the time period from April 3, 2020 through [REDACTED] ("Covered Period").

If you have any questions, please contact the Settlement Administrator, CPT Group, Inc., by email at [REDACTED] or by telephone at 1-[REDACTED]-[REDACTED].

EXHIBIT 2

CASE NAME: HERNANDEZ V. COLLICUT

Requesting Attorney: Harout Messrelian
Plaintiff or Defense: Plaintiff
Firm Name: Messrelian Law
Telephone: (818) 484-6531
Email: hm@messrelianlaw.com

Date: May 28, 2024
Prepared By: Tim Phillips
 50 Corporate Park, Irvine CA 92606
 Tim@CPTGroup.com
Direct Number: (818) 415-2703
Main Number: (800) 542-0900

PROJECT ASSUMPTIONS & ADMINISTRATIVE COSTS

Aggrieved Employees: 70	Check Reminder Postcard: No
Language Translation Services: No	Postage Total: \$61.00
Settlement Website: No	Grand Total: \$7,806.50
Payment Option: Check	CPT'S DISCOUNTED FEE: \$6,000.00
Undeliverable Mail Rate: 6%	
Unclaimed Funds: SCO	

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

After receiving the data, CPT will scrub all records to eliminate duplicates and anomalies, ensuring a higher success percentage in delivering the distribution proceeds. Additionally, CPT will perform an address update via NCOA and, if necessary, conduct an additional skip trace in order to ensure that mail is delivered to the most current address possible. Each aggrieved employee will receive a unique mailing ID that will be utilized for all administrative purposes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Project Manager: Notice Format	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	7	\$5.95
Sub Total:			\$480.95

AGGRIEVED EMPLOYEE SUPPORT

CPT will establish a toll-free telephone number equipped with interactive voice response (IVR) capabilities and live customer support representatives. Live support will be available during regular business hours, Monday to Friday, 9:00 AM to 5:30 PM, Pacific Time (PT). The dedicated case phone number shall be operational for a maximum of 120 days following the disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	14	\$42.00
Sub Total:			\$342.00

SSN VERIFICATION

Authenticate Social Security Number for validity using IRS verification processes and/or IRS backup withholdings processes.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	70	\$7.00
Sub Total:			\$442.00

DISTRIBUTION SERVICES

CPT will establish and oversee the administration of the 26 CFR § 1.468B-1 compliant Qualified Settlement Fund (QSF) for a maximum duration of six months following the distribution of funds. Once approved, CPT will conduct the essential calculations and distribute funds. CPT will send a magnetic ink character recognition (MICR) check to eligible aggrieved employees. CPT employs a Payee Positive Pay System to reconcile cashed checks and performs monthly account reconciliations for the QSF. Undeliverable checks are skip traces to determine a current address and are remailed accordingly. Requests for check reissues will be processed continuously and mailed to employees.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	2	\$300.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & 1099	\$3.00	70	\$210.00
First-Class Postage (up to 1 oz.)	\$0.68	70	\$47.60
Project Supervisor: Account Reconciliation	\$150.00	6	\$900.00
Update Undeliverable Checks Database	\$0.50	4	\$2.10
Clerical Staff	\$60.00	1	\$60.00
Skip Trace for Best Address	\$1.00	4	\$4.20
Remail Undeliverable Checks	\$3.00	4	\$12.00
First-Class Postage (up to 1 oz.)	\$0.68	4	\$2.72
Re-Issue Checks as Required	\$5.00	3	\$15.00
First-Class Postage (up to 1 oz.)	\$0.68	3	\$2.04
Sub Total:			\$3,095.66

TAX REPORTING & SETTLEMENT CONCLUSION

CPT prepares annual tax reporting on behalf of the QSF and Federal and State taxes in accordance with current state and federal regulation.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	1	\$150.00
Project Supervisor: Final Declaration	\$150.00	1	\$150.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
Sub Total:			\$2,645.00

*CPT will file Federal and California taxes in accordance with current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	15	\$2.25
Project Manager: Reporting & Remittance	\$95.00	2	\$190.00
Project Supervisor: Review of Report	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Add'l Account Recons	\$150.00	3	\$450.00
Sub Total:			\$800.89

Total Administration Costs: **\$7,806.50**

Courtesy Discount: **-\$1,806.50**

CPT'S DISCOUNTED FLAT FEE: **\$6,000.00**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
- b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation.
- c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
- f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
- g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
- l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
- m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
- q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
- r) **"Products"** means any and all CPT Services, and work products resulting from Services.
- s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.

- t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) **"Term"** means the term of the Agreement, as set forth in the Order.
- y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.

2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.

3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.

4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.

5. Mutual Obligations.

- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties) from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 3