

AEGIS LAW FIRM, PC
SAMUEL A. WONG, State Bar No. 217104
KASHIF HAQUE, State Bar No. 218672
JESSICA L. CAMPBELL, State Bar No. 280626
FAWN F. BEKAM, State Bar No. 307312
fbekam@aegislawfirm.com
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Attorneys for Plaintiff Joshua McBride individually,
and on behalf of all others similarly situated.

[Additional counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

JOSHUA MCBRIDE, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

ACRT PACIFIC, LLC; ACRT, INC; and DOES 1
through 20, inclusive,

Defendants.

Case No. STK-CV-UOE-2021-2504 and
Case No. STK-CV-UOE-2021-5101

*Assigned for all purposes to:
Hon. Erin Guy Castillo, Dept. 10B*

JOINT STIPULATION OF SETTLEMENT

1 BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
2 RACHEL CHATMAN (CA 206775)
3 rchatman@beneschlaw.com
4 100 Pine Street, Suite 3100 San Francisco, CA 94111
5 Telephone: 628.600.2240

6 BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
7 JOHANNA FABRIZIO PARKER (*Pro Hac Vice*)
8 jrparker@beneschlaw.com
9 ADAM E. PRIMM (*Pro Hac Vice*)
10 aprimm@beneschlaw.com
11 200 Public Square, Suite 2300
12 Cleveland, OH 44114
13 Telephone: 216.363.4500
14 Facsimile: 216.363.4588

15 Attorneys for Defendants ACRT Pacific, LLC
16 and ACRT, Inc.
17
18
19
20
21
22
23
24
25
26
27
28

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiff Joshua McBride (“Named
7 Plaintiff”) and the Class Members or Settlement Class, on the one hand, and Defendants ACRT
8 Pacific, LLC and ACRT, Inc. (“ACRT” or “Defendants”), on the other hand. Named Plaintiff and
9 Defendants collectively are referred to in this Agreement as “the Parties.”

10 Given the uncertainty of litigation, and to avoid costs of further litigation (both economic
11 and opportunity), Plaintiff and Defendants wish to settle both individually and on behalf of the
12 Settlement Class. This Settlement represents a compromise of materially disputed claims.
13 Defendants continue to deny Plaintiff’s allegations. No violation of law has been proven or
14 established.

15 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
16 concluded by agreement of Defendants to pay the settlement amount of One Million Four Hundred
17 Eighty Thousand Dollars (\$1,480,000.00) as provided in Section 3.06(a) below (“Gross Settlement
18 Amount”) pursuant to the terms and conditions of this Agreement and for the consideration set forth
19 herein, including but not limited to, a release of all claims by Named Plaintiff and the Class Members
20 as set forth herein.

21 **ARTICLE I**

22 **DEFINITIONS**

23 Unless otherwise defined herein, the following terms used in this Agreement shall have the
24 meanings ascribed to them as set forth below:

25 a. “Action” means the actions described as follows: *Joshua McBride v. ACRT Pacific,*
26 *LLC; ACRT, Inc.*; and DOES 1 through 20, inclusive,” Case No. STK-CV-UOE-2021-2504,
27 commenced on March 22, 2021, in the Superior Court of the State of California for the County of
28 San Joaquin, and *Joshua McBride v. ACRT Pacific, LLC; ACRT, Inc.*; and DOES 1 through 20,

1 inclusive,” Case No. STK-CV-UOE-2021-5101, commenced on June 4, 2021, in the Superior Court
2 of the State of California for the County of San Joaquin.

3 b. “Agreement” or “Settlement” means this Joint Stipulation of Settlement, including
4 the attached Exhibit(s).

5 c. “Class” or “Settlement Class” means all current and former non-exempt employees
6 who are or were employed by either Defendant in California at any time during the Class Period.

7 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

8 AEGIS LAW FIRM, PC
9 Samuel A. Wong
Kashif Haque
10 Jessica L. Campbell
Fawn F. Bekam
11 9811 Irvine Center Drive, Suite 100
Irvine, California 92618
12 Telephone: (949) 379-6250
Facsimile: (949) 379-6251

13 e. “Class List” means a list based on Defendants’ business records that identifies each
14 Class Member’s name, last known home or mailing address, Social Security number or, as
15 applicable, other taxpayer identification number, dates of employment, and the number of Qualifying
16 Workweeks worked during the Class Period.

17 f. “Class Member(s)” means all members of the Settlement Class.

18 g. “Class Period” means March 22, 2017 through November 22, 2021 or the date the
19 Court grants preliminary approval, whichever is sooner. The Class Period may be altered pursuant
20 to Section 3.04(d).

21 h. “Court” means the California Superior Court for the County of San Joaquin, where
22 the Action is currently pending.

23 i. “Date of Finality” means the later of the following: (1) the date the Final Order is
24 signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no
25 appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or
26 other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10)
27 days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes
28 final.

j. “Defendants” means Defendants ACRT Pacific, LLC and ACRT, Inc.

k. “Defense Counsel” means counsel for Defendants:

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
RACHEL CHATMAN
100 Pine Street, Suite 3100
San Francisco, CA 94111
Telephone: 628.600.2240

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
JOHANNA FABRIZIO PARKER
ADAM E. PRIMM
200 Public Square, Suite 2300
Cleveland, OH 44114
Telephone: 216.363.4500
Facsimile: 216.363.4588

l. “Disposition” means the method by which the Court approves the terms of the Settlement and retains jurisdiction over its enforcement, implementation, construction, administration, and interpretation.

m. “Final Order Approving Settlement of Class Action” or “Final Order” means the final formal court order signed by the Court following the Final Fairness and Approval Hearing in accordance with the terms herein, approving this Agreement.

n. “Gross Settlement Amount” means One Million Four Hundred Eighty Thousand Dollars and Zero Cents (\$1,480,000.00) to be paid by Defendants as provided by this Agreement to settle this Action. All payments to the Class, administration costs, attorney’s fees and costs, Incentive Award, and PAGA Settlement Amount, pursuant to Section 3.07(a) below, shall be paid out of the Gross Settlement Amount. The Gross Settlement Amount will be the total amount paid by Defendants, with the sole exception of the employers’ share of payroll taxes arising from the payments made under this settlement, which shall be paid by Defendants separate from and in addition to the Gross Settlement Amount. The Gross Settlement Amount is subject to a potential pro rata increase at Defendants option pursuant to Section 3.04(e) below. No part of the Gross Settlement Amount shall revert to Defendants.

o. “Incentive Award” means a monetary amount of up to Ten Thousand Dollars (\$10,000.00) for the Named Plaintiff, subject to Court approval, in recognition of his effort and work in prosecuting the Action on behalf of Class Members, and for his general release of claims.

p. “Individual Settlement Payment(s)” means each Participating Class Member’s respective share of the Net Settlement Amount. Individual Settlement Payments will be determined by the calculations provided in this Agreement.

q. “LWDA” means The State of California Labor and Workforce Development Agency.

r. “LWDA Payment” means 75% of the \$50,000 allocated to the settlement of PAGA claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.07(e) of this Agreement, as provided for below.

s. “Motion for Final Approval” means Plaintiff’s submission of a written motion, including any evidence as may be required for the Court to conduct an inquiry into the fairness of the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and to enter a Final Order and Judgment in this Action in the form of **Exhibit C**.

t. “Motion for Preliminary Approval” means Plaintiff’s submission of a written motion, including any evidence as may be required for the Court to grant preliminary approval of the Settlement as required by Rule 3.769 of the California Rules of Court. With the Motion for Preliminary Approval, Plaintiff shall submit a proposed Preliminary Approval Order in the form of **Exhibit B**.

u. “Named Plaintiff” means Joshua McBride.

v. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved administration costs, Class Counsels’ attorney’s fees and costs, Incentive Awards, and LWDA Payment, pursuant to Section 3.07(a)-(f) below.

w. “Non-Participating Class Member(s)” means any Class Member(s) who submit to the Settlement Administrator a valid and timely written request to be excluded from the Class pursuant to Section 3.04(b) below.

x. “Notice Packet” means the Notice of Proposed Class Action Settlement in a form substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

1 y. “PAGA” means the California Private Attorneys General Act of 2004, which is
2 codified in California Labor Code §§ 2698 *et seq.*

3 z. “PAGA Period” shall mean March 19, 2020 through November 22, 2021 or the date
4 the Court grants preliminary approval, whichever is sooner.

5 aa. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
6 allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties have
7 agreed that the PAGA Settlement Amount is Fifty Thousand Dollars (\$50,000), subject to Court
8 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
9 remaining 25% will be part of the Net Settlement Amount and distributed to PAGA Group Members.

10 bb. “PAGA Group Members” means all Class Members employed by Defendants at any
11 time in the PAGA Period.

12 cc. “Participating Class Member(s)” is defined as a Class Member who does not timely
13 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
14 Settlement Amount automatically without the need to return a claim form. Each Participating Class
15 Member will be paid his/her Individual Settlement Payment.

16 dd. “Preliminary Approval Date” means the date the Court preliminarily approves the
17 Settlement embodied in this Agreement.

18 ee. “Qualified Settlement Fund” or “QSF” means a fund within the meaning of Treasury
19 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
20 Administrator for the benefit of Participating Class Members.

21 ff. “Qualifying Workweeks” means the number of weeks that Class Members worked
22 for Defendant as non-exempt employees during the Class Period.

23 gg. “Released Claims” means all claims, demands, rights, liabilities and causes of action,
24 whether known or unknown, that were pled in the Action or which could have been pled in, or arising
25 out of or reasonably related to, facts asserted in the complaints in the Action, or in Named Plaintiff’s
26 March 19, 2021 letter to the LWDA. The Released Claims include (without limitation): (1) failure
27 to pay wages; (2) failure to pay minimum wage; (3) failure to pay overtime wages; (4) all claims
28 concerning Defendants’ use of Alternate Workweek Schedules for Class Members; (5) failure to

1 permit or provide meal breaks; (6) failure to provide compensation in lieu of meal breaks; (7) failure
2 to permit or provide rest breaks; (8) failure to provide compensation in lieu of rest breaks; (9) all
3 wage statement violations, including failure to provide accurate wage statements; (10) failure to pay
4 all wage due on separation from employment and/or within the required time; and (11) unfair
5 competition (violation of California Business and Professions Code §§17200).

6 hh. “Released Parties” means Defendants, and each of their past, present and future
7 affiliates, subsidiaries, parents, successors and predecessors in interest, and each of their past and
8 present officers, directors, shareholders, managers, employees, agents, attorneys, principals, heirs,
9 representatives, accountants, insurers, auditors, and consultants.

10 ii. “Response Deadline” means the deadline by which Class Members must postmark or
11 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
12 Response Deadline will be forty-five (45) calendar days after the initial mailing of the Notice Packet
13 by the Settlement Administrator, unless the forty-fifth (45th) calendar day falls on a Sunday or
14 federal holiday, in which case the Response Deadline will be extended to the next day on which the
15 U.S. Postal Service is open. The Response Deadline will be extended as set forth herein if there is a
16 re-mailing.

17 jj. “Settlement Administration Costs” means all costs incurred by the Settlement
18 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
19 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
20 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
21 of checks to Class Counsel for attorneys’ fees and costs, to Named Plaintiff for his Incentive Awards,
22 and to the LWDA. The Settlement Administration Costs shall be paid from the Gross Settlement
23 Amount.

24 kk. “Settlement Administrator” means Phoenix Settlement Administrators, which the
25 Parties have agreed will be responsible for the administration of the Individual Settlement Payments
26 to be made by Defendants from the Gross Settlement Amount and related matters under this
27 Agreement.
28

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Action. Defendants do not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the Class as to Defendants will be vacated and Named Plaintiff, Defendants, and the Class will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, the fact that Defendants did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. If the Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendants expressly reserve the right to challenge the propriety of class certification in the Action for any purpose, if the Date of Finality does not occur.

The Parties and their respective counsel shall take all steps that may be requested by the Court relating to the approval and implementation of this Agreement and shall otherwise use their respective best efforts to obtain Court approval and implement this Agreement. If the Court does not

1 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
2 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
3 resolution, the Parties agree to seek the assistance of mediator Steven J. Serratore to resolve the
4 dispute.

5 **ARTICLE III**

6 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

7 The procedure for obtaining Court approval of and implementing this Agreement shall be as
8 follows:

9 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

10 Named Plaintiff will bring a motion before the Court for an order conditionally certifying the
11 Class to include all claims pled in the Action based on the preliminary approval of this Agreement.
12 Plaintiff will also bring a motion for preliminary approval of this Settlement containing all the terms
13 and conditions herein notwithstanding any new legal developments regarding the Released Claims.
14 The date that the Court grants preliminary approval of this Agreement will be the "Preliminary
15 Approval Date."

16 Class Counsel must draft the preliminary approval papers and give Defense Counsel a draft
17 of the papers to review at least five (5) calendar days before the filing deadline. Defendants shall be
18 permitted, but not required, to file their own brief or statement in support of Preliminary Approval.

19 **Section 3.02: The Settlement Administrator**

20 The Parties have chosen Phoenix Settlement Administrators to administer this Settlement and
21 to act as the Settlement Administrator, including but not limited to distributing and responding to
22 inquiries about the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net
23 Settlement Amount and the Individual Settlement Payments, issuing the Individual Settlement
24 Payment checks and distributing them to Participating Class Members, establishing and maintaining
25 the QSF, and issuing the payment to Class Counsel for attorneys' fees and costs, the Incentive Award
26 checks to Named Plaintiff, and the employer payroll taxes to the appropriate taxing authorities. The
27 Settlement Administrator shall expressly agree to all of the terms and conditions of this Agreement.
28

1 All costs of administering the Settlement, including but not limited to all costs and fees
2 associated with preparing, issuing and mailing any and all notices to Class Members and/or
3 Participating Class Members, all costs and fees associated with computing, processing, reviewing,
4 and mailing the Individual Settlement Payments, all costs and fees associated with preparing any tax
5 returns and any other filings required by any governmental taxing authority or agency, all costs and
6 fees associated with preparing any other checks, notices, reports, or filings to be prepared in the
7 course of administering disbursements from the Net Settlement Amount, and any other costs and fees
8 incurred and/or charged by the Settlement Administrator in connection with the execution of its
9 duties under this Agreement (“Settlement Administration Costs”), shall be paid to the Settlement
10 Administrator from the Gross Settlement Amount.

11 **Section 3.03: Notice to Class Members**

12 No later than fifteen (15) business days after the Preliminary Approval Date, Defendants will
13 provide the Settlement Administrator with a “Class List” in electronic format based on their business
14 records, identifying the names of the Class Members, their last known home addresses, Social
15 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
16 and weeks worked during the Class Period.

17 Within ten (10) business days of receiving a Class List from Defendants, the Settlement
18 Administrator will send Class Members, by first-class mail, at their last known address, the Court
19 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
20 Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate
21 share of the Net Settlement Amount. Class Members will have forty-five (45) days from the date of
22 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
23 Settlement Administrator will check all Class Member addresses against the National Change of
24 Address database and shall update any addresses before mailing. The Settlement Administrator will
25 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
26 Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall
27 have fifteen (15) calendar days from the re-mailing, or forty-five (45) calendar days from the date of
28 the initial mailing, whichever is later, in which to postmark objections or requests for exclusion.

1 Class Members shall not be required to submit claim forms in order to receive a proportional share
2 of the Net Settlement Amount.

3 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
4 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
5 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
6 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
7 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
8 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the parties
9 that reasonable means be used to locate Class Members and that the Settlement Administrator be
10 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
11 Individual Settlement Payments to all Participating Class Members.

12 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
13 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
14 status report provided to the Parties.

15 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
16 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
17 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
18 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
19 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
20 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
21 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
22 procedures set forth in Section 3.07(g) below.

23 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
24 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
25 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
26 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
27 exclusion and objections that the Settlement Administrator received.

Section 3.04: Responses to Notice

a. Class Member Disputes

If any Class Member disagrees with Defendants' records as to his or her Qualifying Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period and submit such writing to the Settlement Administrator by the Response Deadline, along with any supporting documentation. The Notice will also provide a method for the Class Member to challenge the employment data on which his or her Individual Settlement Payment is based. The Settlement Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on the information provided to it.

b. Requests for Exclusion from Class

In order for any Class Member to validly exclude himself or herself from the Class and this Settlement (*i.e.*, to validly opt out), a written request for exclusion must be signed by the Class Member or his or her authorized representative, and must be sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later). The Notice Packet shall contain instructions on how to validly exclude himself or herself from the Class and this Settlement (*i.e.*, opt out), including the language to be used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the signed request for exclusion was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any request for exclusion it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Any Class Member who timely and validly requests exclusion from the Class and this Settlement will not be entitled to any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement, and will not have any right to object, appeal, or comment thereon.

Any Class Member who fails to timely submit a request for exclusion shall have waived any objections and shall automatically be deemed a Class Member whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order Approving Settlement of Class Action, and by the other rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action and/or released in this Agreement will be extinguished.

If more than 10% of Class Members opt out of the Settlement, Defendants will have the option of rescinding this Agreement. This option must be exercised within ten (10) business days of discovering more than 10% of Class Members opted out.

Named Plaintiff may not request to be excluded from the Settlement.

c. Objections to Settlement

For any Class Member to object to this Agreement, or any term of it, the person making the objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15) days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later), a written statement of the grounds of objection, signed by the objecting Class Member or his or her attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and the date the signed objection was postmarked, shall be conclusively determined according to the records of the Settlement Administrator. The Settlement Administrator shall send any objections it receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class Members may also appear at the final approval hearing to object. The Court retains final authority with respect to the consideration and admissibility of any Class Member objections.

Named Plaintiff may not object to the Settlement.

d. Encouragement of Class Members/Non-Disclosure

The Parties to this Agreement and the counsel representing such Parties shall not, directly or indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from Class Members.

Plaintiff and Class Counsel agree not to disclose or publicize the Agreement contemplated herein, the fact of the Agreement, its terms or contents, or the negotiations underlying the Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class Members and as shall be contractually required to effectuate the terms of the Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove their qualifications in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel.

e. Right of Plaintiff to Adjust Gross Settlement Amount

Defendants have estimated the number of Qualifying Workweeks as 74,000. If the number of Qualifying Workweeks increases by more than 10% as of the end of the Class Period, i.e., if there are more than 81,400 Qualifying Workweeks, there will be a pro rata adjustment to the Gross Settlement Amount equal to \$20 per additional Qualifying Workweek in excess of 81,400.

Alternatively, Defendants will have the option of ending the Class Period as of any date the increase reaches 81,400 Qualifying Workweeks to avoid any pro rata adjustment to the Gross Settlement Amount.

Section 3.05: Final Fairness and Approval Hearing

On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement and determine whether the Court should give it final approval, and (2) consider any objections made and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a Proposed Final Order Approving Settlement of Class Action in the form attached as **Exhibit C**.

Section 3.06: Settlement Payment Procedures

a. Settlement Amount

In exchange for the Released Claims set forth in this Agreement, Defendants agree to pay the Gross Settlement Amount in the amount of One Million Four Hundred Eighty Thousand Dollars (\$1,480,000.00), subject to a pro rata increase under the condition set forth in Section 3.04(e) plus

1 employer payroll taxes. The Gross Settlement Amount includes all Individual Settlement Amounts
2 to Participating Class Members, all administration costs, Class Counsel's attorney's fees and costs,
3 PAGA Settlement Amount, and the Incentive Payments. Other than the employer's share of payroll
4 taxes, the Gross Settlement Amount is the Defendants' total payment obligation under this
5 Agreement.

6 Within thirty (30) calendar days after the Court signs the Final Order, Defendants shall
7 transfer the Gross Settlement Amount into a QSF established by the Settlement Administrator either
8 directly or by sending the funds to the Settlement Administrator to be deposited and distributed. The
9 Settlement Administrator will use these funds to fund payment of the Individual Settlement Payments
10 to Participating Class Members, Class Counsel's attorneys' fees and costs, the Incentive Awards, the
11 LWDA Payment, and the Settlement Administration Costs.

12 Within ten (10) court days after receiving the Gross Settlement Amount, the Settlement
13 Administrator will pay the Individual Settlement Payments to Participating Class Members, Class
14 Counsel's attorneys' fees and costs, LWDA Payment, the Incentive Awards, and employer and
15 employee tax withholdings applicable to the Net Settlement Amount allocated to wages. Provided,
16 however, no payments shall be distributed if the Date of Finality has not passed. Without limiting
17 this restriction on distribution in any way, for explanation purposes only, payments shall be delayed
18 until the Date of Finality if there were objections filed to the Settlement until the appeal period has
19 passed or any appeal has been addressed. Please refer to the definition of Date of Finality for more
20 specific timing requirements. Prior to the distribution (regardless of when it occurs), the Settlement
21 Administrator will perform a search based on the National Change of Address Database to update
22 and correct for any known or identifiable address changes.

23 **b. Payment of Attorneys' Fees and Costs**

24 Class Counsel shall submit an application for an award of attorneys' fees of up to one-third
25 of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Four
26 Hundred Ninety-Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents
27 (\$493,333.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty
28 Thousand Dollars (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the

1 Court at the Final Fairness and Approval Hearing. Defendants shall not object to or oppose any such
2 application in these amounts. Class Counsel shall serve Defendants with copies of all documents
3 submitted in support of their application for an award of attorneys' fees and costs.

4 Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the
5 Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys'
6 fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs,
7 and expenses related to the investigation, prosecution, and settlement of the Action incurred through
8 the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees
9 and/or costs that Class Counsel requests, the difference between the requested and awarded amounts
10 will be reallocated to the Net Settlement Amount.

11 Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator for the fee
12 and cost award allowed by the Court. Class Counsel is responsible for all taxes associated with any
13 payment made to them under this Settlement.

14 **c. Payment of Settlement Administration Costs**

15 The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and
16 shall not constitute payment to any Participating Class Member(s). The amount shall not exceed
17 Twelve Thousand Nine Hundred Seventy-Five Dollars (\$12,975.00).

18 **d. Payment of Incentive Award to Named Plaintiff**

19 Subject to Court approval, the Named Plaintiff shall receive an Incentive Award of up to Ten
20 Thousand Dollars (\$10,000.00), the request for which Defendants will not object to or oppose. The
21 Incentive Award shall be paid out of the Gross Settlement Amount and shall not constitute payment
22 to any Participating Class Member(s) other than Named Plaintiff. To the extent that the Court
23 approves less than the amount of incentive award that Class Counsel request, the difference between
24 the requested and awarded amounts will be reallocated to the Net Settlement Amount. Even in the
25 event that the Court reduces or does not approve the requested Incentive Award, Named Plaintiff
26 shall not have the right to object to, revoke or opt-out of this Settlement, and it will remain binding.

27 Because it is the intent of the Parties that the Incentive Award represent payment to Named
28 Plaintiff for his service to the Class Members, and not wages, the Settlement Administrator will not

1 withhold any taxes from the Incentive Award. The Incentive Award will be reported on a Form 1099,
2 which the Settlement Administrator will provide to Named Plaintiff and to the pertinent taxing
3 authorities as required by law. No tax advice has been given to Named Plaintiff. No tax result is
4 guaranteed as related to any payment made under this Agreement. Defendants make no
5 representation as to the tax treatment of the payments made under this Settlement. Named Plaintiff
6 will be responsible for correctly characterizing the payment for tax purposes and for payment of any
7 taxes owing on said amount.

8 **e. Payment to the Labor and Workforce Development Agency**

9 In consideration of claims made under PAGA, Class Counsel will request that the Court
10 approve allocation of Fifty Thousand Dollars (\$50,000) of the Gross Settlement Amount to these
11 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
12 Workforce Development Agency ("LWDA Payment"), and twenty-five percent (25%) will be paid
13 to the Net Settlement Amount for distribution to PAGA Group Members. Defendants will not oppose
14 this request. The entire PAGA Settlement Amount will be paid out of the Gross Settlement Amount.
15 The Court's adjustment, if any, of the amount allocated to Named Plaintiff's PAGA claim in the
16 Action, will not invalidate this Agreement.

17 **f. Payment of Individual Settlement Payments to Participating Class Members**

18 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
19 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
20 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
21 each Class Member. To calculate the minimum amount each Class Member will receive based on
22 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
23 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
24 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
25 Member's approximate Individual Settlement Payment amount will be included in his or her Notice
26 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
27 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
28

individual Qualifying Workweeks worked during the Class Period by each Participating Class Member.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 15% allocated to wages; 10% allocated to interest, and 75% allocated to penalties. The amounts 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. The employer-side payroll taxes will be paid separate from and in addition to the Gross Settlement Amount. 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.

No tax advice has been given to any Class Member. No tax result is guaranteed as related to any payment made under this Agreement. Defendants make no representation as to the tax treatment of the payments made under this Settlement. Each Class Member who receives an Individual Settlement Payment will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount.

No later than ten (10) business days after receiving the Gross Settlement Amount from Defendants, the Settlement Administrator shall prepare and mail the checks for the Individual Settlement Payments to Participating Class Members. Provided however, no payments shall be made if the Date of Finality has not passed. Please also refer to Section 3.06(a). Individual Settlement Payments paid from the Net Settlement Amount allocated to wages will be reduced by applicable employer and employee tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the extent required by law for the interest and penalty portions of the Individual Settlement Payments. Participating Class Members shall have 180 days from the date their Individual Settlement Payment checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

1 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
2 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
3 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
4 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
5 Settlement Administrator is unable to obtain a valid mailing address through this process, the
6 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
7 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

8 **g. Lost, Stolen or Unauthorized Negotiation of Checks.**

9 Neither Named Plaintiff nor Defendants shall bear any liability for lost or stolen checks,
10 forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own
11 acts of omission or commission, the same is true for the Settlement Administrator.

12 **h. Default on Payment.**

13 Defendants' failure to fund the Gross Settlement Amount within thirty (30) calendar days
14 after the date that the Court issued the Final Order shall be considered a default. In the event
15 Defendants fail to timely fund the Gross Settlement Amount, the Settlement Administrator will
16 provide notice to Class Counsel and Defendants' counsel within three (3) business days of the missed
17 payment. Thereafter, Defendants will have seven (7) days to cure the default and tender payment to
18 the Settlement Administrator. In the event Defendants fail to cure the default within the times set
19 forth herein, Named Plaintiff may elect to enter judgment against Defendants, on an ex parte basis,
20 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiff will be entitled
21 to recover interest at ten percent (10%) per year from the due date for such payment and reasonable
22 attorneys' fees and costs.

23 **i. No Credit Toward Benefit Plans.**

24 The Individual Settlement Payments made to Participating Class Members under this
25 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
26 calculate any additional benefits under any benefit plans to which any Class Members may be
27 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
28 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'

intention that this Agreement will not affect any rights, contributions, or amounts to which any Class Members may be entitled under any benefit plans.

ARTICLE IV

LIMITATIONS ON USE OF THIS SETTLEMENT

Section 4.01: No Admission

Defendants contend that all of their employment practices have complied with applicable law, that Class Members were and are properly compensated for all wages, including (without limitation) overtime, and were and are provided all meal and rest breaks, in compliance with applicable law; and that their conduct was not willful or otherwise unlawful with respect to the payment of wages to Class Members. Defendants have denied and continue to deny each of the claims and contentions alleged by Plaintiff in the Action. Defendants deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action and believe they have valid defenses to Plaintiff's claims.

Defendants dispute the allegations in the Action and disputes that, but for this Settlement, a Class should not have been certified in the Action. The Released Parties deny any violation of law. This Agreement is entered into solely for the purpose of settling highly disputed claims. Regardless of whether the Settlement is finally approved by the Court, nothing in this Agreement or any conduct related to this Agreement is intended nor will be construed as an admission of liability or wrongdoing by Defendants or the Released Parties.

Section 4.02: Non-Evidentiary Use

Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this

1 Agreement or for Defendants to establish that a Class Member has resolved any of his or her claims
2 released through this Agreement. Pursuant to California Evidence Code Section 1152, this
3 Settlement is inadmissible in any proceeding, except a proceeding to approve, interpret or enforce
4 this Settlement. Should the Date of Finality not occur, this Settlement is void but remains protected
5 by California Evidence Code Section 1152.

6 7 **Section 4.03: Nullification**

8 The Parties have agreed to the certification of the Class encompassing all claims alleged in
9 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
10 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
11 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
12 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
13 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
14 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
15 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
16 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
17 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
18 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
19 should be certified by the Court in a non-settlement context in this Action or any other action, and in
20 any of those events, Defendants expressly reserve the right to oppose certification of the Class.

21 In the event of a timely appeal from the Final Order, the Final Order shall be stayed, and the
22 Gross Settlement Amount shall not be distributed pending the completion of the appeal. See Section
23 3.06(a, f) for further requirements as to the timing for payments under this Settlement.

24 **ARTICLE V**

25 **RELEASES**

26 **Section 5.01: Released Claims by Class Members**

27 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiff and
28 Participating Class Members who do not opt out of the Settlement, fully and forever release, waive,

1 and discharge the Released Parties from all Released Claims. This release applies to the entire Class
2 Period. Except as provided in this Settlement, Class Members who do not submit a timely request
3 for exclusion will not be eligible to receive any additional wages or penalty payments from the
4 Released Parties. The Class Members agree not to sue or otherwise make a claim against any of the
5 Released Parties for any of the Released Claims. Class Members further agree not to oppose a
6 Motion to Dismiss filed by any of the Released Parties should any action be initiated by a Class
7 Member concerning or related to the Released Claims.

8 **Section 5.02: Released Claims by PAGA Group Members**

9 Upon the date of funding the Gross Settlement Account, the State of California and PAGA
10 Group Members release and discharge the Released Parties from all PAGA claims arising from or
11 reasonably related to the Released Claims. This release applies to the PAGA Period, regardless of
12 whether PAGA Group Members opt out of the Class Settlement.

13 **Section 5.03: Named Plaintiff's Release of Unknown Claims**

14 Upon the date of funding the Gross Settlement Amount, Named Plaintiff waives, releases,
15 acquits, and forever discharges the Released Parties from any and all claims, actions, charges,
16 complaints, grievances, and causes of action, of any nature, whether known or unknown, which exist
17 or may exist as of the Parties' execution of this Agreement.

18 Section 1542 of the California Civil Code provides as follows:

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

24 Plaintiff's general release provided herein is made with an express waiver and relinquishment
25 of any claim, right, or benefit under California Civil Code § 1542. Plaintiff agrees never to sue, join,
26 or otherwise make a claim against the Released Parties as to any claim arising out of events occurring
27 prior to the date the signing this agreement,
28

1 **Section 5.04: Agreement Is Complete Defense.**

2 This Agreement may be pleaded as a complete defense to any action, suit or other proceeding
3 that may be instituted, prosecuted or attempted in breach of or contrary to this Agreement.

4 **ARTICLE VI**

5 **MISCELLANEOUS PROVISIONS**

6 **Section 6.01: Amendments or Modification**

7 The terms and provisions of this Agreement may be amended or modified only by an express
8 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

9 **Section 6.02: Assignment**

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

15 **Section 6.03: Governing Law**

16 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
17 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
18 of laws.

19 **Section 6.04: Entire Agreement**

20 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
21 contains the entire understanding of the Parties with respect to the subject matter contained herein.
22 In case of any conflict between text contained in Articles I through VI of this Agreement and text
23 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
24 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
25 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
26 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
27 supersedes all prior agreements and understandings among the Parties with respect to the settlement
28

1 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
2 prior agreements or proposals.

3 **Section 6.05: Waiver of Compliance**

4 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
5 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
6 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
7 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
8 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
9 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

10 **Section 6.06: Counterparts and Fax/PDF Signatures**

11 This Agreement, and any amendments hereto, may be executed in any number of counterparts
12 and any Party and/or their respective counsel may execute any such counterpart, each of which when
13 executed and delivered shall be deemed to be an original. All counterparts taken together shall
14 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
15 signature.

16 **Section 6.07: Meet and Confer Regarding Disputes**

17 Should any dispute arise among the Parties or their respective counsel regarding the
18 implementation or interpretation of this Agreement, a representative of Class Counsel and a
19 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
20 to submitting such disputes to the Court.

21 **Section 6.08: Agreement Binding on Successors**

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

24 **Section 6.09: Cooperation in Drafting**

25 The Parties have cooperated in the negotiation and preparation of this Agreement. This
26 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
27 was the drafter or participated in the drafting of this Agreement.
28

1 **Section 6.10: Fair and Reasonable Settlement**

2 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
3 the Action and have arrived at this Agreement through arm's-length negotiation and in the context
4 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
5 further believe that the Settlement is and is consistent with public policy, and fully complies with
6 applicable law.

7 **Section 6.11: Headings**

8 The descriptive heading of any section or paragraph of this Agreement is inserted for
9 convenience of reference only and does not constitute a part of this Agreement and shall not be
10 considered in interpreting this Agreement.

11 **Section 6.12: Notice**

12 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
13 communications under this Agreement must be in writing and addressed as follows:

14 *To Named Plaintiff and the Class:*

15 AEGIS LAW FIRM, PC
16 Samuel A. Wong
17 Kashif Haque
18 Jessica L. Campbell
19 Fawn F. Bekam
20 9811 Irvine Center Drive, Suite 100
21 Irvine, California 92618
22 Telephone: (949) 379-6250
23 Facsimile: (949) 379-6251

24 And

25 *To Defendants:*

26 BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
27 RACHEL CHATMAN
28 100 Pine Street, Suite 3100
29 San Francisco, CA 94111
30 Telephone: 628.600.2240

31 BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP
32 JOHANNA FABRIZIO PARKER
33 ADAM E. PRIMM
34 200 Public Square, Suite 2300

Cleveland, OH 44114
Telephone: 216.363.4500
Facsimile: 216.363.4588

Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction

To the extent consistent with class action procedure, this Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.14: Mutual Full Cooperation

The Parties agree fully to cooperate with each other to accomplish the terms of this Agreement, including but not limited to the execution of such documents, and the taking of such other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its terms. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

Section 6.15: Authorization to Act

Class Counsel warrants and represents that they are authorized by Named Plaintiff, and Defense Counsel warrants that they are authorized by Defendants, to take all appropriate action required to effectuate the terms of this Agreement, except for signing documents, including but not limited to this Agreement, that are required to be signed by the Parties themselves. Defendants represent and warrant that the individual executing this Agreement on its behalf has the full right,

power, and authority to enter into this Agreement and to carry out the transactions contemplated herein.

Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

Section 6.17: Documents.

Plaintiff and Class Counsel agree that none of the documents or information provided to them by Defendants shall be used for any purpose other than prosecution of this Action. To the extent that Plaintiff or Class Counsel has received confidential documents or information from Defendants associated with this Action, each agrees to destroy these documents within sixty (60) days following the Date of Finality upon demand by Defendants, although Class Counsel may retain one copy for its files in a secure location.

Section 6.18: Interim Stay of Proceedings.

The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings as may be necessary to implement and complete the Settlement.

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 11/8/2021

JOSHUA MCBRIDE

Bv: _____

Named Plaintiff

DocuSigned by:

JOSHUA MCBRIDE

7B640A80DBFA4F1...

Dated: 11/11/2021

ACRT PACIFIC, LLC

DocuSigned by:
 By: Brian Joiner
3C99AF08FDAC431...
 (Signature)
 Brian Joiner
 (Printed Name)
 President
 (Title)

Dated: 11/11/2021

ACRT, INC.

DocuSigned by:
 By: Kevin Puls
FE1ABEA29C544A7...
 (Signature)
 Kevin Puls
 (Printed Name)
 President
 (Title)

APPROVED AS TO FORM ONLY:

Dated: October 19, 2021

AEGIS LAW FIRM, PC

By: 
 Samuel A. Wong
 Kashif Haque
 Jessica L. Campbell
 Fawn F. Bekam

Attorneys for Named Plaintiff Joshua McBride

1 Dated:

2 11/12/2021

BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP

3 By:

4 
Johanna Fabrizio Parker

5 Attorneys for Defendants ACRT Pacific, LLC
6 and ACRT, Inc.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Joshua McBride v. ACRT Pacific, LLC, et al., San Joaquin County Superior Court
Case No. STK-CV-UOE-2021-2504
Case No. STK-CV-UOE-2021-5101

If you worked for ACRT Pacific, LLC and/or ACRT, Inc. as a non-exempt employee in California at any time from March 22, 2017, through November 22, 2021, a settlement of a class action lawsuit may affect your rights.

This is a court-authorized notice. It is not a solicitation from a lawyer.

- A proposed settlement (the “Settlement”) has been reached in a class action lawsuit entitled *Joshua McBride v. ACRT Pacific, LLC, et al.*, Case No. STK-CV-UOE-2021-2504 and Case No. STK-CV-UOE-2021-5101 (San Joaquin County Superior Court) (together, the “Lawsuit”). The purpose of this Notice of Class Action Settlement (“Notice”) is to briefly describe the Lawsuit, and to inform you of your rights and options in connection with the Lawsuit and the proposed settlement.
- The Court has preliminarily approved a class action settlement with Defendants ACRT Pacific, LLC and ACRT, Inc. (collectively “Defendants”), which will affect all non-exempt employees who worked for Defendants in California at any time between March 22, 2017 through November 22, 2021 (the “Class”).
- With this preliminary approval of the settlement, the Court has not made any decision as to whether Plaintiff can or will win the Lawsuit. In other words, the Court has not said that Defendants violated any law, or that Plaintiff or any other person is entitled to receive money or any other relief.
- If the Court grants final approval of the Settlement, there may be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE IN THE SETTLEMENT – <u>NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Cannot pursue your own lawsuit. By doing nothing, you become part of the Class and will collect a settlement award as detailed below. But you will not be able to bring your own lawsuit against Defendants for wage and hour violations that relate to the claims brought in this Lawsuit.
OBJECT TO THE SETTLEMENT	Stay in this Lawsuit. Receive a payment. Object. Cannot pursue your own lawsuit. To object to the Settlement, you must write to the Settlement Administrator about why you do not like the settlement. You will remain a member of the Class, and if the Court approves the Settlement, you will be bound by the terms of the settlement in the same way as Class Members who do not object.

ASK TO BE EXCLUDED	Get out of this Lawsuit. Receive a smaller or no payment from it. Keep your right to pursue your own lawsuit for damages. If you ask to be excluded from the Settlement, you keep your right to sue Defendants separately about the legal claims in this Lawsuit, except as to the claim under the California Private Attorneys General Act (“PAGA”). If you choose this option, you must exclude yourself, in writing, from the Settlement. As a result, you may receive no payment at all. At most, you will receive a very small payment for resolution of the PAGA claim if you are a member of the PAGA Group, which is a subset of the Class.
--	---

- **Regardless of the option you choose, you will not be retaliated against for exercising your rights.** To object to the Settlement or to ask to be excluded, you must act before [DATE].
- **Any questions?** Read on or contact the Settlement Administrator listed below at 1-XXX-XXX-XXXX.

BASIC INFORMATION

1. Why did I get this notice?

Defendants’ records show that you worked for Defendants in California as a non-exempt employee at some point between March 22, 2017 and November 22, 2021.

The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. Any final determination of those issues will be made at the final hearing. You have legal rights and options that you may exercise as part of this settlement. Judge Erin Guy Castillo of the Superior Court of the State of California, County of San Joaquin, is overseeing this lawsuit.

2. What is this lawsuit about?

In this Lawsuit, Plaintiff Joshua McBride (“Plaintiff”) claims that Defendants: (1) failed to pay wages; (2) failed to provide meal periods; (3) failed to permit rest breaks; (4) failed to pay all wages owed upon termination of employment; (5) failed to provide timely and accurate, itemized wage statements; and (6) Plaintiff argued that these claimed violations were unfair and unlawful business practices under California’s Unfair Competition Laws, and that they entitled Plaintiff to recover civil penalties to be split 75% to the State of California and 25% to certain employees. Plaintiff also claimed entitlement to restitution, interest, attorneys’ fees, and costs.

Throughout the litigation, Defendants have denied—and continue to deny— all allegations in the case. Defendants do not believe that they violated any laws or regulations relating to how they paid employees, when they paid employees, how much they paid employees, or how wage statements displayed information. Defendants deny any wrongdoing and assert that their conduct at all times complied with the law. Defendants further deny that they owe the monies claimed in the Lawsuit. However, Defendants have voluntarily agreed to the terms of a negotiated settlement in order to avoid the burden and expense of continued litigation.

3. What is a class action and who is involved?

In a class action lawsuit such as this, a person called the “Class Representative” sues on behalf of other people who may have similar claims. The people together are a “Class” or “Class Members.” The person who is the Class Representative is also called the plaintiff. The companies sued are called the defendants. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

This class action also includes a “Private Attorney General” (PAGA) claim where the Plaintiff is attempting to recover penalties for the State of California. In a PAGA action, the State receives 75% of the civil penalties, while employees receive 25%. This settlement will resolve all claims by the State for civil penalties arising from claims made by Plaintiff or his counsel in the Lawsuit during the period of March 19, 2020 to November 22, 2021 and non-exempt employees covered by the Lawsuit will be barred from bringing another lawsuit on behalf of the State for such penalties.

4. Why is this Lawsuit a class action?

For settlement purposes only, Plaintiff and Defendants agreed that this case can proceed as a class action and to ask the Court to approve the settlement for the Class. The Court has not ruled on the merits of the case, and the decision to certify Class for settlement purposes should not be viewed as a prediction or agreement that Plaintiff or the Class would ultimately prevail on the merits of the action.

5. What are the terms of the proposed Settlement?

Subject to final Court approval, the major terms of the Settlement are as follows:

1. Defendant have agreed to pay \$1,480,000.00 to settle the claims made in this lawsuit. This amount is also known as the “Gross Settlement Amount”.
2. Plaintiff, on behalf of the Class, has agreed to release all of their claims in this lawsuit against Defendants.
3. **Class Settlement Payments:** Plaintiff seeks the following deductions from the \$1,480,000.00 Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (currently equal to \$493,333.33) for Class Counsel’s attorneys’ fees.
 - b. Up to \$20,000.00 for reimbursement of Class Counsel’s litigation costs.
 - c. An incentive award of up to \$10,000.00 to Plaintiff for filing the Lawsuit, performing work in connection with the Lawsuit, and undertaking the risks of filing the Lawsuit.
 - d. Up to \$12,975.00 to cover the costs of the Settlement Administrator.
 - e. Payment of \$37,500.00 to the California Labor and Workforce Development Agency for release of PAGA claims.

If the Court approves the requested deductions, there will be approximately \$906,191.67 remaining, before deducting for taxes, to be distributed to Settlement Class Members. The remaining funds will be referred to as the “Net Settlement Amount.” Any amounts not requested or awarded by the Court will be included in the Net Settlement Amount. The Net Settlement Amount will be distributed to Class Members who do not request exclusion (the “Settlement Class Members”) on a pro rata basis according to the number of weeks they worked during the Class Period, and whether they signed individual settlements.

PAGA Settlement Payments. A portion of the Gross Settlement Amount in the amount of \$12,500 will be set aside for Class Members who worked for Defendants in California at some point between March 19, 2020 and November 22, 2021 (“PAGA Group”). If you are a member of the PAGA Group, you will receive a pro rata share of the PAGA Group Payment, regardless of whether you opt-out of the settlement. You will not be able to pursue any claim on behalf of the State for such penalties.

Settlement Payments Generally. If a settlement check remains uncashed after 180 days from issuance, the check will become void and a stop payment will be placed on the uncashed check and the amount will be held with the Controller of the State of California to be held under the Unclaimed Property Law.

Your estimated settlement payment is listed in Section 8 of this Notice. Applicable taxes will be withheld from your payment.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The “Class” includes: All non-exempt employees who worked for Defendants in California at any time between March 22, 2017, through November 22, 2021 (the “Class Period”).

7. I’m still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Settlement Administrators, the “Settlement Administrator”, at the designated phone number for this matter at (800) 779-2104 or by calling or writing the lawyers representing the Class in this case (“Class Counsel”), at the phone number or address listed in Section 19.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendants, the total number of weeks you worked in California for Defendants as a non-exempt employee during the Class Period is [REDACTED].

Based on information provided above and anticipated court-approved deductions, your share of the settlement is estimated to be \$ [REDACTED], less applicable taxes and withholdings.

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 16, below, of any changes to your mailing address for timely payment.

Disputing Your Payment Amount

If you believe your total weeks worked during the Class Period shown above are not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct by no later than [DATE]. You should also send any documents or other information that supports your belief. The Settlement Administrator will attempt to resolve any dispute based on Defendants' records and any information you provide. Any disputes not resolved by the Settlement Administrator will be resolved by the Court.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement and you do not opt out of the Settlement, you will be deemed to have released Defendants, and each of their past, present and future affiliates, subsidiaries, parents, successors and predecessors in interest, and each of their past and present officers, directors, shareholders, managers, employees, agents, attorneys, principals, heirs, representatives, accountants, insurers, auditors, and consultants ("Released Parties") from all claims, demands, rights, liabilities and causes of action, whether known or unknown, that were pled in the Lawsuit or which could have been pled in, or arising out of or reasonably related to, facts asserted in the complaints in the Lawsuit, or in Named Plaintiff's March 19, 2021 letter to the California Labor and Workforce Development Agency. The Released Claims include: (1) failure to pay wages; (2) failure to pay minimum wage; (3) failure to pay overtime wages; (4) all claims concerning Defendants' use of Alternate Workweek Schedules for Class Members; (5) failure to permit or provide meal breaks; (6) failure to provide compensation in lieu of meal breaks; (7) failure to permit or provide rest breaks; (8) failure to provide compensation in lieu of rest breaks; (9) all wage statement violations, including failure to provide accurate wage statements; (10) failure to pay all wages due on separation from employment and/or within the required time; (11) unfair competition (violation of California Business and Professions Code §§17200) ("Released Claims"). All Settlement Class Members shall be bound by the Settlement, and will have released and given up all Released Claims. These Settlement Class Members will not be eligible to receive any additional wages or penalty payments for the Released Claims.

Additionally, if you worked during the period of March 19, 2020 through November 22, 2021, you are a PAGA Group Member and you will also release the right to bring a claim for civil penalties on behalf of the State (and other employees) based on the same facts or theories as the Released Claims, which arose during the PAGA Period, even if you have formally opted-out of being a Settlement Class Member. Settlement is also conditioned on covenant of the PAGA Group members that they will not participate in or receive recovery or monies in connection with any proceeding seeking penalties under Section 2699, which arose during the PAGA Period for claims based on the same facts or theories as the Released Claims facts which were or could have been alleged in the Complaint.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out). In order to object, you may mail a written objection to the Settlement Administrator at the address in Section 16 below. To be valid, your objection must: (1)

state your full name, address, and telephone number and the last four digits of your Social Security Number; (2) state the grounds for the objection; (3) be signed by you; and (4) indicate whether you intend to appear at the Final Approval Hearing. You can also hire an attorney at your own expense to represent you in your objection. Your written objection to the Settlement Administrator must be postmarked on or before [DATE]. You may appear in person at the Final Fairness and Approval Hearing to present any oral objections even if you do not submit a timely written objection.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Class (and the class settlement). If you exclude yourself from the Class—sometimes called "opting-out" of the Class – you won't get any money or benefits from the class settlement. However, you may then be able to sue or continue to sue Defendants for your own claims if permitted by law. If you exclude yourself, you will not be legally bound by the Court's ruling in this Lawsuit, except for the release by PAGA Group Members, as explained above. Whether or not you submit a Request for Exclusion, you will still receive a small PAGA Group Payment if you are determined to be a part of the PAGA Group.

12. How do I ask to be excluded from the Class?

If you are a Class Member and would like to exclude yourself from the Class ("opt-out"), you, or your authorized representative, need to submit a written statement requesting exclusion from the Class to the Settlement Administrator at the address in Section 16 below. The statement must be signed by you or your authorized representative and must be postmarked on or before [DATE]. To be valid, your request for exclusion must: (1) state your full name, address, and telephone number and the last four digits of your Social Security Number; (2) contain a clear statement that you are requesting to opt out of, or be excluded from, the Settlement in *Joshua McBride v. ACRT Pacific, LLC, et al.*; and (3) be signed by you.

Any Class Member who requests to be excluded from the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment on the Settlement. Class Members who fail to submit a valid and timely request for exclusion will be bound by all terms of the Settlement and any ruling from the Court to give final approval of the Settlement. But Class Members cannot opt out of releasing PAGA claims, as those claims belong to the State of California and Plaintiffs have agreed to release those claims by acting as a proxy for the State.

THE LAWYERS REPRESENTING YOU

13. Who are the attorneys representing the Parties?

Lawyers for the Class

Samuel A. Wong (swong@aegislawfirm.com)
 Kashif Haque (khaque@aegislawfirm.com)
 Jessica L. Campbell (jcampbell@aegislawfirm.com)
 Fawn F. Bekam (fbekam@aegislawfirm.com)
 AEGIS LAW FIRM, PC
 9811 Irvine Center Drive, Suite 100
 Irvine, CA 92618
 Tel: 949-379-6250

Defendants' Lawyers

BENESCH, FRIEDLANDER, COPLAN & ARONOFF
 LLP
 Rachel Chatman (rchatman@beneschlaw.com)
 100 Pine Street
 Suite 3100
 San Francisco, CA 94111
 Telephone: 628.600.2240

BENESCH, FRIEDLANDER, COPLAN & ARONOFF
LLP

Johanna Fabrizio Parker (jparker@beneschlaw.com)

Adam E. Primm (aprimm@beneschlaw.com)

200 Public Square, Suite 2300

Cleveland, OH 44114

Telephone: 216.363.4500

Facsimile: 216.363.4588

The Court has preliminarily decided that Aegis Law Firm, PC is qualified to represent you and all Class Members. The law firm's attorneys are experienced in handling similar cases against other employers. More information about this law firm, their practice, and their lawyers' experience is available at www.aegislawfirm.com.

14. How will the lawyers be paid?

As part of the Settlement with Defendants, Class Counsel has requested one-third of the Gross Settlement Amount (currently equal to \$493,333.33) in attorneys' fees, plus costs not to exceed \$20,000, to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel's fees and costs from your Individual Settlement Payment.

15. How will Plaintiff be paid?

As part of the Settlement with Defendants, Class Counsel has requested an incentive award of up to \$10,000.00 to be paid to Plaintiff for his efforts in this matter during initial investigation, discovery, mediation and the like, while serving as Class Representatives and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

16. Who is handling the Settlement Administration process?

Phoenix Settlement Administrators

3194-C Airport Loop Drive

Costa Mesa, CA 92626

(800) 779-2104

17. When is the Final Fairness and Approval Hearing and do I have to attend?

The Final Fairness and Approval Hearing has been set for [DATE], at [TIME] in Department 10B of the San Joaquin County Superior Court for the State of California, located at 180 E. Weber Avenue, 2nd Floor, Stockton, California 95202. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. Please note that the hearing may be continued without further notice to the Class. Make sure you check the Court's website before attempting to come to Court in person. You may be required to appear only by phone or video, depending on the current safety requirements due to the pandemic.

18. When will I get money after the hearing?

The Court will hold a hearing on [DATE], to decide whether to approve the settlement. If the Court approves the settlement, then there may be appeals if anyone objects. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. If the Court approves the settlement and if you do not opt out, your individual payment set forth in Section 8 above is expected to be distributed after Defendants make payment to the Settlement Administrator. If there are no objections or appeals, Defendants will transfer the settlement funds within 30 calendar days of approval, and the Administrator will then distribute the funds. If there are objections or appeals, the payment can be delayed by at least 60 days, or even over a year. To check on the progress of the settlement, contact the Settlement Administrator or Class Counsel at the phone number or address listed in Section 19.

GETTING MORE INFORMATION

19. Are more details available?

For more information, the pleadings and other records in this litigation, including copies of the Settlement Agreement, may be examined at any time during regular business hours at the office of the Clerk of the Superior Court of the State of California for San Joaquin County, at the San Joaquin County Superior Court, located at 180 E. Weber Avenue, 2nd Floor, Stockton, California 95202. You can also view the case records online at the court's website: <https://www.sjcourts.org/case-management-search/>. Click "Case Search by Case Number", then click "Log In". In the upper left corner, click the drop-down link named "Cases" and click "Civil Case". Follow the instructions for submitting the Case Lookup: Type: CV, Year: 2021, and Case No.: 2504. Then click "Retrieve" to view the case record.

Any questions regarding this Class Notice or the Lawsuit may be directed to the Claims Administrator at the below address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact the Lawyers for the Class at the address, telephone number or email address set forth above. If your address changes, or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.

Settlement Administrator:

Phoenix Settlement Administrators
3194-C Airport Loop Drive
Costa Mesa, CA 92626
(800) 779-2104

PLEASE DO NOT CALL OR WRITE TO THE COURT, OR TO ANY OF DEFENDANTS' MANAGERS, SUPERVISORS, OR DEFENDANTS' ATTORNEYS WITH QUESTIONS ABOUT THIS NOTICE

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JOSHUA MCBRIDE, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

ACRT PACIFIC, LLC; ACRT, INC; and
DOES 1 through 20, inclusive,

Defendants.

Case No. STK-CV-UOE-2021-2504 and
Case No. STK-CV-UOE-2021-5101

Assigned for all purposes to:
Hon. Erin Guy Castillo, Dept. 10B

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: []
Time: []
Dept: 10B

1 WHEREAS, the above-entitled actions are pending before this Court as a putative class
2 action and representative action (together, the “Action”);

3 WHEREAS, Plaintiff Joshua McBride (“Plaintiff”), individually and on behalf of all
4 others similarly situated and on behalf of the general public have applied to this Court for an order
5 preliminarily approving the settlement of the Action in accordance with the Joint Stipulation of
6 Settlement (the “Settlement” or “Agreement”) entered into by Plaintiff and Defendants ACRT
7 Pacific, LLC and ACRT, Inc. (“Defendants”) which sets forth the terms and conditions for a
8 proposed settlement upon the terms and conditions set forth therein (Plaintiff and Defendants
9 shall be collectively referred to herein as the “Parties”); and

10 WHEREAS, the Court has read and considered Plaintiff’s Motion for Preliminary
11 Approval of Class Action Settlement.

12 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
13 THAT:

14 1. This Order incorporates by reference the definitions in the Settlement attached as
15 Exhibit 1 to the Declaration of Jessica L. Campbell in Support of Plaintiff’s Motion for Preliminary
16 Approval of Class Action Settlement and all terms defined therein shall have the same meaning in
17 this Order.

18 2. It appears to the Court on a preliminary basis that (a) the Settlement is fair,
19 adequate and reasonable; (b) the Gross Settlement Amount and Net Settlement Amount are fair,
20 adequate and reasonable when balanced against the probable outcome of further litigation relating
21 to liability and damages issues; (c) sufficient investigation and research have been conducted such
22 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
23 (d) settlement at this time will avoid additional costs by all Parties, as well as avoid the delay and
24 risks that would be presented by the further prosecution of the Action; and (e) the Settlement has
25 been reached as the result of non-collusive, arms-length negotiations.

26 3. With respect to the Class and for purposes of proceeding pursuant to California
27 Code of Civil Procedure § 382 for approval of the settlement only, the Court finds on a
28 preliminary basis that (a) Class Members are ascertainable and so numerous that joinder of all

1 Class Members is impracticable; (b) there are questions of law and fact common to the Class that
2 predominate over any questions affecting only individual Class Members; (c) Plaintiff's claims
3 are typical of the Class' claims; (d) class certification is a superior method for implementing the
4 Settlement and adjudicating this Action in a fair and efficient manner; (e) the Class
5 Representatives can fairly and adequately protect the Class' interests; and (f) Class Counsel are
6 qualified to serve as counsel for the Class.

7 4. Accordingly, solely for purposes of effectuating this Settlement, this Court
8 hereby conditionally certifies the class for settlement purposes only. The Class is defined as all
9 current and former non-exempt employees who are or were employed by Defendants in California
10 at any time from March 22, 2017, through November 22, 2021.

11 5. Plaintiff Joshua McBride is hereby preliminarily appointed and designated,
12 for all purposes, as the Class Representative and the attorneys of Aegis Law Firm, PC are hereby
13 preliminarily appointed and designated as counsel for the Class ("Class Counsel"). Class Counsel
14 is authorized to act on behalf of the Class Members with respect to all acts or consents required by,
15 or which may be given pursuant to, the Settlement, and such other acts reasonably necessary to
16 consummate the Settlement. Any Class Member may enter an appearance either personally or
17 through counsel of such individual's own choosing and at such individual's own expense. Any
18 Class Member who does not enter an appearance or appear on his or her own will be represented
19 by Class Counsel.

20 6. Should, for whatever reason, the Settlement not become final, the fact that the
21 Parties were willing to stipulate to certification of the Class as part of the Settlement shall have no
22 bearing on, nor be admissible in connection with, the issue of whether a class should be certified in
23 a non-settlement context.

24 7. The Court hereby preliminarily approves the definition and disposition of the Gross
25 Settlement Amount and Net Settlement Amount and related matters provided for in the Settlement,
26 subject to modification at final approval.

27 8. The Court hereby preliminarily approves Class Counsel attorneys' fees of
28 \$493,333.33, Class Counsel litigation expenses not to exceed \$20,000.00, an Incentive Award up

1 to \$10,000.00 to Plaintiff Joshua McBride, and costs of administration not to exceed \$12,975.00,
2 subject to final approval.

3 9. The Court hereby approves, as to form and content, the Class Notice, to be
4 distributed to Class Members. The Court finds that distribution of the Class Notice, substantially in
5 the manner and form set forth in the Settlement and this Order, meets the requirements of due
6 process, is the best notice practicable under the circumstances, and shall constitute due and
7 sufficient notice to all persons entitled thereto.

8 10. The Court hereby appoints Phoenix Settlement Administrators as Settlement
9 Administrator and hereby directs the Settlement Administrator to mail or cause to be mailed to
10 Class Members the Class Notice using the procedures set forth in the Settlement Agreement. Class
11 Members who wish to participate in the settlement provided for by the Settlement Agreement do
12 not need to respond to the Class Notice.

13 11. All costs of mailing of the Class Notice, whether foreseen or not, shall be paid
14 from the Gross Settlement Amount, including the cost of searching for Class Members' addresses
15 as provided in the Settlement, and all other reasonable costs of the Settlement Administrator up
16 to \$12,975.00 as provided in the Settlement.

17 12. Any Class Member may choose to opt-out of and be excluded from the Class as
18 provided in the Class Notice. Any such person who chooses to opt-out of and be excluded from the
19 Class will not be entitled to any recovery under the Settlement and will not be bound by the
20 Settlement or have any right to object, appeal or comment thereon. Class Members who have not
21 requested exclusion/opted-out shall be Participating Class Members and bound by all
22 determinations of the Court, the Settlement, and the Final Judgment.

23 13. A Final Fairness and Approval Hearing shall be held before this Court on
24 _____, 2021 at _____ in Department 10B of the Superior Court for the
25 State of California, County of San Joaquin, located at 180 E. Weber Avenue, 2nd Floor, Stockton,
26 California 95202. All papers in support of final approval and related awards for fees, costs, and
27 Plaintiff's incentive award must be filed and served at least 16 court days before the final approval
28 hearing.

1 14. Any Participating Class Member must object to the Settlement by following the
2 instructions for submitting written objections that are set forth in the Settlement Agreement and
3 Class Notice, and may appear at the Final Fairness and Approval Hearing. The Court shall retain
4 final authority with respect to the consideration and admissibility of any objections. Any
5 Participating Class Member who objects to the Settlement shall be bound by the order of the Court.

6 15. The Settlement is not a concession or admission, and shall not be used against the
7 Released Parties, as an admission or indication with respect to any claim of any fault or omission
8 by the Released Parties. Whether or not the Settlement is finally approved, neither the Settlement,
9 nor any document, statement, proceeding or conduct related to the Settlement, nor any reports or
10 accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as
11 or deemed to be evidence of a presumption, concession, indication or admission by Defendants of
12 any liability, fault, wrongdoing, omission, concession or damage in the Action, or in any other
13 action or proceeding, except for purposes of enforcing the Settlement once it receives final approval.

14 16. Pending the Final Approval and Fairness Hearing, all proceedings in this Action,
15 other than proceedings necessary to carry out or enforce the terms of the Settlement and this Order,
16 are hereby stayed.

17 17. Jurisdiction is hereby retained over this Action, the Parties to the Action, and each
18 of the Class Members for all matters relating to this Action, and this Settlement, including
19 (without limitation) all matters relating to the administration, interpretation, effectuation, and/or
20 enforcement of this Settlement and this Order.

21 18. The Court reserves the right to adjourn or continue the date of any hearing and all
22 dates provided for in the Settlement without further notice to Class Members, and retains
23 jurisdiction to consider all further applications arising out of or connected with the proposed
24 Settlement.

25
26 DATED: _____

Honorable Erin Guy Castillo
JUDGE OF THE SUPERIOR COURT

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

JOSHUA MCBRIDE, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

ACRT PACIFIC, LLC; ACRT, INC; and
DOES 1 through 20, inclusive,

Defendants.

Case No. STK-CV-UOE-2021-2504 and
Case No. STK-CV-UOE-2021-5101

Assigned for all purposes to:
Hon. Erin Guy Castillo, Dept. 10B

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING JUDGMENT**

Date: [REDACTED]
Time: [REDACTED]
Dept: 10B

1 This matter came on for hearing on [REDACTED], in Department 10B of the above-
2 captioned Court on the unopposed Motion for Final Approval of Class Action Settlement
3 pursuant to California Rule of Court 3.769, this Court's Order Granting Preliminary Approval
4 filed [REDACTED] and the Joint Stipulation of Settlement ("Settlement Agreement"), a copy of
5 which was filed in conjunction with the Plaintiff's Motion for Preliminary Approval of Class
6 Action Settlement.

7 Having received and considered the Settlement Agreement, the supporting papers filed by
8 the Parties, and the evidence and argument received by the Court in conjunction with the
9 unopposed Motion for Preliminary Approval of Class Action Settlement heard [REDACTED] and
10 the instant Motion for Final Approval, the Court grants final approval of the Settlement and
11 HEREBY ORDERS AND MAKES THE FOLLOWING DETERMINATIONS:

12 1. Pursuant to the Order Granting Preliminary Approval, a Notice Packet was sent to
13 each Settlement Class Member by first-class mail. These papers informed the Settlement Class of
14 the terms of the Settlement, their right to receive an Individual Settlement Payment, their right (a)
15 to comment on or object to the Settlement, (b) to request exclusion from the Settlement and pursue
16 their own remedies, and (c) of their right to appear in person or by counsel at the final approval
17 hearing and to be heard regarding approval of the Settlement. Adequate periods of time were
18 provided by each of these procedures. [No member of the Class filed written objection to the
19 proposed Settlement as part of this notice process or stated an intention to appear at the final
20 approval hearing.]¹

21 2. The Court finds and determines that this notice procedure afforded adequate
22 protections to Settlement Class Members and provides the basis for the Court to make an informed
23 decision regarding approval of the Settlement based on the responses of the Settlement Class.
24 The Court finds and determines that the notice provided in this case was the best notice
25 practicable, which satisfied the requirements of law and due process.

26
27
28 ¹ Update per record.

1 3. With respect to the Settlement Class and for purposes of approving this Settlement
2 only, this Court finds and concludes that: (a) the members of the Settlement Class are
3 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions
4 of law or fact common to the Settlement Class, and there is a well-defined community of interest
5 among members of the Settlement Class with respect to the subject matter of the Action; (c) the
6 claims of Class Representative Joshua McBride are typical of the claims of the members of the
7 Settlement Class; (d) the Class Representative has fairly and adequately protected the interests of
8 the members of the Settlement Class; (e) a class action is superior to other available methods for
9 an efficient adjudication of this controversy; and (f) the counsel of record for the Class
10 Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in their
11 individual and representative capacities for the Class.

12 4. The Court has certified a Settlement Class, as that term is defined in and by the
13 terms of the Settlement Agreement as all current and former non-exempt employees employed
14 by ACRT Pacific, LLC and ACRT, Inc. at any time during the Class Period of March 22, 2017
15 through November 22, 2021, and the Court deems this definition sufficient for purposes of
16 California Rule of Court 3.765(a).

17 5. The Court hereby confirms Aegis Law Firm, PC as Class Counsel.

18 6. The Court hereby confirms Plaintiff Joshua McBride as the Class Representative
19 in this Action.

20 7. The Court finds and determines that the terms set forth in the Settlement
21 Agreement are fair, reasonable, and adequate and directs the Parties to effectuate the Settlement
22 according to its terms, having found that the Settlement was reached as a result of informed and
23 non-collusive arm's-length negotiations facilitated by a neutral mediator. The Court further finds
24 that the Parties conducted extensive investigation, research, and discovery and that their attorneys
25 were able to reasonably evaluate their respective positions. The Court also finds that the
26 Settlement will enable the Parties to avoid additional and potentially substantial litigation costs,
27 as well as delay and risks if the Parties were to continue to litigate the case. The Court has
28

1 reviewed the monetary recovery provided as part of the Settlement and recognizes the significant
2 value accorded to the Class.

3 8. The Court further finds and determines that the terms of the Settlement are fair,
4 reasonable and adequate to the Settlement Class and to each Settlement Class Member and that
5 the Settlement is ordered finally approved, and that all terms and provisions of the Settlement
6 should be and hereby are ordered to be consummated.

7 9. The Court finds and determines that the Individual Settlement Payments to be paid
8 to participating Settlement Class Members as provided for by the Settlement are fair and
9 reasonable. The Court hereby gives final approval to and orders the payment of those amounts
10 be made to the participating Settlement Class Members in accordance with the Settlement
11 Agreement.

12 10. The Court finds and determines that payment to the California Labor and
13 Workforce Development Agency of \$37,500.00 as its share of the settlement of civil penalties in
14 this case is fair, reasonable, and appropriate. The Court hereby gives final approval to and orders
15 that the payment of that amount be paid in accordance with the Settlement Agreement.

16 11. The Court finds and determines that the fees and expenses in administering the
17 Settlement incurred by Phoenix Settlement Administrators, in the amount of \$12,975.00, are fair
18 and reasonable. The Court hereby gives final approval to and orders the payment of that amount
19 in accordance with the Settlement.

20 12. The Court finds and determines the Class Representative Incentive Award of
21 \$10,000 for Plaintiff is fair and reasonable. The Court hereby orders the Administrator to make
22 this payment to the Plaintiff/Class Representative in accordance with the terms of the Settlement
23 Agreement.

24 13. Pursuant to the terms of the Settlement, and the authorities, evidence and
25 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees
26 in the sum of \$493,333.33 and litigation costs of \$20,000.00. The Court finds such amounts to
27 be fair and reasonable. The Court hereby orders the Settlement Administrator to make these
28 payments in accordance with the terms of the Settlement Agreement.

1 14. The Court finds and determines that upon satisfaction of all obligations in the
2 Settlement and this Order, and by virtue of this Judgment, Plaintiff and each Class Member fully
3 and forever release, waive, and discharge Defendants, and each of their past, present and future
4 affiliates, subsidiaries, parents, successors and predecessors in interest, and each of their past
5 and present officers, directors, shareholders, managers, employees, agents, attorneys, principals,
6 heirs, representatives, accountants, insurers, auditors, and consultants (“Released Parties”) from
7 all claims, demands, rights, liabilities and causes of action, whether known or unknown, that
8 were pled in the Action or which could have been pled in, or arising out of or reasonably related
9 to, facts asserted in the complaints in the Action, or in Named Plaintiff’s March 19, 2021 letter
10 to the California Labor and Workforce Development Agency. The Released Claims include: (1)
11 failure to pay wages; (2) failure to pay minimum wage; (3) failure to pay overtime wages; (4)
12 all claims concerning Defendants’ use of Alternate Workweek Schedules for Class Members;
13 (5) failure to permit or provide meal breaks; (6) failure to provide compensation in lieu of meal
14 breaks; (7) failure to permit or provide rest breaks; (8) failure to provide compensation in lieu
15 of rest breaks; (9) all wage statement violations, including failure to provide accurate wage
16 statements; (10) failure to pay all wages due on separation from employment and/or within the
17 required time; (11) unfair competition (violation of California Business and Professions Code
18 §§17200) (“Released Claims”). With this Order and Judgment, the Class will be bound by the
19 settlement, will be permanently barred from prosecuting against the Released Parties any of the
20 Released Claims pursuant to the Settlement, and will not be eligible to receive any additional
21 wages or penalty payments based on the Released Claims from Defendants.

22 15. The Court finds and determines that upon satisfaction of all obligations in the
23 Settlement and this Order, and by virtue of this Judgment, all current and former non-exempt
24 employees of Defendants who worked in California at any time from March 19, 2020 to
25 November 22, 2021, including Plaintiff, will release and forever discharge all claims, demands,
26 rights, liabilities and causes of action under the California Private Attorneys General Act of
27 2004 against the Released Parties as related to the Released Claims.

1 16. The Court finds and determines that upon satisfaction of all obligations in the
2 Settlement and this Order, and by virtue of this Judgment, Plaintiff waives, releases, acquits,
3 and forever discharges the Released Parties from any and all claims, actions, charges,
4 complaints, grievances, and causes of action, of any nature, whether known or unknown, which
5 exist or may exist as of the Parties' execution of the Settlement.

6 Section 1542 of the California Civil Code provides as follows:

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

11 Plaintiff's general release provided herein is made with an express waiver and
12 relinquishment of any claim, right, or benefit under California Civil Code § 1542. Plaintiff is
13 barred from suing, joining, or otherwise making a claim against the Released Parties as to any
14 claim arising out of events occurring prior to the date of his signing the Settlement.

15 17. The Settlement is not an admission by Defendants nor is this Order a finding of
16 (a) the validity of any allegations, (b) any wrongdoing by Defendants, (c) the validity of any
17 Released Claim, or (d) the existence or amount of any damages. This Order, the Settlement,
18 any document referred to herein, or any action taken to carry out the Settlement, shall not be
19 construed or deemed an admission of liability, culpability, or wrongdoing on the part of
20 Defendants.

21 18. Without affecting the finality of this order or the entry of judgment in any way,
22 the Court retains jurisdiction of all matters relating to the interpretation, administration,
23 implementation, effectuation, and enforcement of this order and the Settlement.

24 19. Nothing in this order shall preclude any action to enforce the Parties' obligations
25 under the Settlement or under this order, including the requirement that Defendants make
26 payment to the participating Settlement Class Members in accordance with the Settlement.

27 20. Upon completion of administration of the Settlement, the Settlement
28 Administrator will provide written certification of such completion to the Court and counsel for

the Parties which shall be filed with the Court five (5) court days before the non-appearance compliance hearing set for [REDACTED] [or _____, 2022 at 10:00 a.m.], in Dept. 10B.

21. This Order shall constitute a final judgment pursuant to California Rule of Court 3.769(h).

22. The Court hereby enters final judgment in accordance with the terms of the Settlement Agreement, the Order Granting Preliminary Approval of Class Action Settlement filed on [REDACTED], and this Order.

23. The Parties will bear their own costs and attorneys' fees except as otherwise provided by this Court's Order awarding Class Counsels' Award for attorneys' fees and litigation costs.

JUDGMENT IS SO ENTERED.

DATED: _____, 2022

Honorable Erin Guy Castillo
JUDGE OF THE SUPERIOR COURT