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Attorneys for Defendant
POWER MAINTENANCE SERVICES, INC. dba
PILOT PAINTING & CONSTRUCTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

FREDERICK MCCLURE, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

POWER MAINTENANCE SERVICES, INC.
dba PILOT PAINTING & CONSTRUCTION,
a California corporation; and DOES 1 through
10, inclusive,

Defendants.

CASE NO. 37-2021-00022333-CU-OE-CTL

Assigned to Hon. John S. Meyer
Dept. C-64

**JOINT STIPULATION OF PAGA
SETTLEMENT AND RELEASE OF
CLAIMS**

Date Action Filed: May 20, 2021

1 This Joint Stipulation of PAGA Settlement and Release of Claims ("Settlement,"
2 "Settlement Agreement" or "Agreement"), subject to the approval of the Court, that the Action
3 and PAGA Released Claims shall be settled and resolved subject to the following terms and
4 conditions set forth in this Settlement Agreement, is entered by and between Plaintiff Frederick
5 McClure ("Plaintiff"), for himself and on behalf of the State of California and other Aggrieved
6 Employees pursuant to the California Private Attorneys General Act, and Defendant Power
7 Maintenance Services, Inc. dba Pilot Painting & Construction ("Defendant" or "Pilot Painting")
8 (collectively, the "Parties").

9 This Settlement Agreement shall be effective on the latter of: (a) the Court's final
10 approval of the Settlement if no objections by or on behalf of Aggrieved Employees have been
11 filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been
12 filed or withdrawn; (c) the final resolution of any appeal that has been filed ("Effective Date").

13 **I. DEFINITIONS**

14 Unless otherwise defined herein, the following terms, when used in this Settlement
15 Agreement, shall have the following meanings:

- 16 1. "Action" means the matter entitled *Frederick McClure v. Power Maintenance*
17 *Services, Inc. dba Pilot Painting & Construction*, San Diego County Superior Court, Case No.
18 37-2021-00022333-CU-OE-CTL ("the Action"), and as set forth in Plaintiff's correspondence to
19 the California Labor and Workforce Development Agency dated May 17, 2021 ("LWDA
20 Letter").
- 21 2. "Aggrieved Employees" consist of all individuals employed by Defendant in
22 California in any hourly non-exempt capacity at any time during the PAGA Period, i.e., from
23 May 17, 2020 through January 31, 2022.
- 24 3. "Pilot Painting" means Power Maintenance Services, Inc. dba Pilot Painting &
25 Construction.
- 26 4. "Complaint" means the operative complaint filed by Plaintiff in San Diego County
27 Superior Court, Case No. 37-2021-00022333-CU-OE-CTL.
28

5. "Court" or "San Diego County Superior Court" means the Superior Court of California for the County of San Diego.

6. "Defense Counsel" or "Counsel for Defendant" are James A. Bowles, Esq., Elissa Gysi, Esq. and Richard S. Zuniga, Esq. of Hill, Farrer & Burrell, LLP, One California Plaza, 300 S. Grand Ave, 37th Floor, Los Angeles, California 90071.

7. "Employee PAGA Portion" is the amount to be distributed to the Aggrieved Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Section III.24 herein.

8. "Employee Payments" refers to the PAGA Penalty Payments that will be distributed to Aggrieved Employees, as provided in Section III.24 herein.

9. "Gross Settlement Amount" is the sum of One Hundred Ninety Thousand Dollars and Zero Cents (\$190,000.00), which represents the total amount payable under this Settlement Agreement by Pilot Painting, and includes the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-awarded Attorneys' Fees forty per cent (40%) (not to exceed \$76,000.00) to Plaintiff's Counsel, Court-awarded Litigation Costs documented by Plaintiff Counsel's billing statements (not to exceed \$15, 000.00) to Plaintiff's Counsel, and a Court-awarded payment to the Settlement Administrator for Settlement Administration Costs (not to exceed \$3,500.00).

10. "LWDA" means the California Labor and Workforce Development Agency.

11. "LWDA Payment" means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the Net Settlement Amount.

12. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) Attorneys' Fees to Plaintiff's Counsel; (b) Litigation Costs to Plaintiff's Counsel; (c) Settlement Administration Costs to Settlement Administrator.

13. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

14. "PAGA Period" means the time period from May 17, 2020 through January 31,

2022.

15. "PAGA Released Claims" means any and all claims, whether known or unknown, to recover civil penalties pursuant to PAGA alleged in the operative complaint in the Action and in the LWDA Letter for civil penalties during the PAGA Period, and any and all claims that could have been premised on the facts, claims, or legal theories described in the operative complaint in the Action from the alleged (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; and (7) failure to provide accurate itemized wage statements; and (8) failure to maintain accurate record of all hours worked; and (9) failure to pay all earned wages twice per month.

16. "Plaintiff's Counsel" means Kane Moon, Esq. and Lilit Ter-Astvatsatryan Esq. of Moon & Yang, APC, 1055 W. Seventh St., Suite 1880, Los Angeles, California 90017.

17. "Released Parties" mean Pilot Painting and its former, present and future owners, parents, and subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives.

18. "Settlement Administrator" means Phoenix Settlement Administrators, Inc., a third-party administrator who shall administer the settlement, subject to approval by the Court, in accordance with this Settlement Agreement.

II. RECITALS

19. On May 17, 2021, Plaintiff provided written notice to the LWDA and Pilot Painting asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of California Labor Code sections 201, 203, 204, 226, 226.7, 510, 512, 1174.5, 1194, and 2802 and applicable IWC Wage Order for the alleged (1) failure to pay for all hours worked, including overtime; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to maintain accurate records of hours worked and meal periods; (5) failure to reimburse and indemnify expenses; (6) failure to timely pay all wages at termination; and (7) failure to provide

1 accurate itemized wage statements; and (8) failure to pay all earned wages twice per month.

2 20. On May 20, 2021, Plaintiff filed a class action complaint in the Superior Court of
3 California, County of San Diego, Case No. 37-2021-00022333-CU-OE-CTL, entitled *Frederick*
4 *McClure v. Power Maintenance Services, Inc. dba Pilot Painting & Construction; and DOES 1*
5 *through 10 inclusive, Defendants*, alleging violations of the Labor Code for: (1) failure to pay
6 minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods;
7 (4) failure to authorize and permit rest periods; (5) failure to indemnify necessary business
8 expenses; (6) failure to timely pay final wages at termination; and (7) failure to provide accurate
9 itemized wage statements; and a claim under Business and Professions Code §§ 17200, *et seq.* for
10 unfair competition. On August 5, 2021, Plaintiff filed a First Amended Complaint to add a cause
11 of action for civil penalties under PAGA based on the Labor Code violations and an additional
12 Labor Code violation for failure to maintain accurate record of all hours worked. On September
13 21, 2021, McClure dismissed the class and individual claims and unfair competition claim.

14 21. On December 9, 2021, the Parties participated in a day-long mediation with
15 mediator Steve Serratore, Esq. In preparation for the mediation, Plaintiff's counsel requested and
16 Defendant's counsel provided sample time and payroll data for the purported Aggrieved
17 Employees, and personnel and employment documents. With Mr. Serratore's assistance, the
18 Parties agreed to fully and finally resolve the Action and the PAGA Released Claims as to
19 Plaintiff, the State of California, and the Aggrieved Employees.

20 **III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT**

21 The Parties agree as follows:

22 22. **Non-Admission**. Nothing in this Settlement Agreement nor action taken in
23 implementation thereof shall be construed to be an admission or concession by Plaintiff that his
24 claims do not have merit or by Pilot Painting of any liability or wrongdoing as to Plaintiff,
25 Aggrieved Employees, or any other person, and Pilot Painting specifically disclaims any such
26 liability or wrongdoing. Nor will any of the foregoing be used in any way in any other judicial,
27 arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation
28 of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any

obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation, or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions and Pilot Painting will contend that a representative action is not appropriate.

23. **Gross Settlement Amount.** Pilot Painting shall pay \$190,000.00 as the Gross Settlement Amount. Pilot Painting will not pay more than the Gross Settlement Amount. However, in the event that the actual pay periods from May 17, 2020 to December 9, 2021 is more than 15% greater than 6,500 (i.e., if there are more than 7,475 pay periods from May 17, 2020 to December 9, 2021), Pilot Painting shall increase the Gross Settlement Amount in proportion to the increase in pay periods over 15% (e.g., if the number of pay periods is 16% greater than 6,500, Pilot Painting will increase the Gross Settlement Amount by 1%). ("Escalator Clause"). In the event that the Escalator Clause is triggered, the Parties shall cooperate to obtain an amended judgment which reflects the increased Gross Settlement Amount.

Pilot Painting shall deposit the GSA with the Settlement Administrator in two payments as follows: (a) \$95,000.00 within thirty (30) days of Court approval of the Settlement or June 1, 2022, whichever is later; and (b) \$95,000.00 within sixty (60) days of Court approval of the Settlement or October 1, 2022, whichever is later. If the Escalator Clause is triggered, any additional funds due shall be paid with the 2nd installment payment.

24. **Net Settlement Amount.** The Parties agree that the Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as follows: Seventy-five percent (75%) of the Net Settlement Amount shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees on a *pro rata* basis, based on their respective number of pay periods worked for Pilot

Painting during the PAGA Period. Payments to Aggrieved Employees of their share of the employee PAGA portion shall be referred to as "PAGA Penalty Payment(s)." Each Aggrieved Employee will be paid a non-wage check for the PAGA Penalty Payment, and will receive an IRS Form 1099 for said payment.

25. **Attorneys' Fees Payment and Litigation Costs Payment.** Pilot Painting will not oppose Plaintiff's request for an award of attorneys' fees in an amount up to \$76,000.00 (up to 40% of Gross Settlement Amount ("Attorneys' Fees") and litigation costs and expenses documented by Plaintiff Counsel's billing statements in the amount up to \$15,000.00 incurred in prosecuting this Action ("Litigation Costs"), to Plaintiff's Counsel. In the event the Court approves a payment of less than \$76,000.00 for Attorneys' Fees and/or less than \$15,000.00 for Litigation Costs to Plaintiff's Counsel, the difference will be a part of the Net Settlement Amount. The Attorneys' Fees and Litigation Costs payments will be reported on an IRS Form 1099 issued to Plaintiff's Counsel. Except as set forth in this Paragraph, the Parties shall each bear their own attorneys' fees and costs.

26. **Settlement Administration Costs.** Pilot Painting will not oppose Plaintiff's request for payment in the amount up to \$3,500.00 to the Settlement Administrator for administering the settlement. In the event the Court approves a payment of less than \$3,500.00 for Settlement Administration Costs, the difference will be a part of the Net Settlement Amount. Settlement Administration Costs will be reported on an IRS Form 1099 issued to the Settlement Administrator.

27. **PAGA Released Claims.** Upon the Effective Date and payment of all funds due under this Settlement, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all PAGA Released Claims defined in Section I.15 herein. Upon entry of the Order approving the settlement and judgment entered thereon, Plaintiff, the State of California, and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties. This release of claims only covers those civil penalties which are recoverable under PAGA, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees

1 other than Plaintiff may have under the law against Released Parties for violations of the
2 California Labor Code.

3 28. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.** Plaintiff
4 represents and warrants that he has not assigned or transferred or purported to assign or transfer to
5 any person or entity, any claim or portion thereof, or interest therein, which is or may be subject
6 to this Settlement Agreement. Plaintiff acknowledges that he has read this Settlement Agreement,
7 that he fully understands his rights, privileges, and duties under the Settlement Agreement, and
8 enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that
9 he has had the opportunity to consult with his attorneys to explain the terms of this Settlement
10 Agreement and the consequences of signing this Settlement Agreement.

11 29. **Limited Disclosure and No Publicity.** Except as provided below, to the extent
12 necessary to effectuate the settlement or as required by the PAGA statute, a court of law, or legal
13 process, neither Plaintiff nor Plaintiff's Counsel will publicize the terms of this Settlement
14 Agreement or issue a press release, hold a press conference, publish information about the
15 settlement on any website or through any social media, or otherwise publicize the settlement or
16 communicate its terms in public or in private, unless ordered by the Court.

17 30. **Obligation of Plaintiff's Counsel to Submit Settlement Agreement to the**
18 **LWDA.** To permit judicial review and approval of the PAGA Payment, as required by Labor
19 Code section 2698, et seq., Plaintiff's Counsel will file the Settlement Agreement with the Court
20 and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the
21 Settlement, per Lab. Code § 2699(1)(2).

22 31. **Filing of Approval of Settlement by Plaintiff's Counsel.** Plaintiff's Counsel
23 shall be responsible for preparing the Motion for Approval of the Settlement ("Motion") and
24 providing Defendant's Counsel with sufficient opportunity to propose revisions to the Motion
25 prior to filing. Plaintiff's Counsel will file the Motion, which is mutually agreed to by the Parties,
26 as soon as practicable. Plaintiff's Counsel will serve the Motion on Defendant's Counsel.
27 Pursuant to California Labor Code section 2698, et seq., Plaintiff's Counsel shall undertake all
28 required submissions and disclosures to the Court to obtain approval of the Settlement. With the

1 filing of the Motion. Plaintiff's Counsel will present for the Court's approval and entry a
2 Proposed Order and Judgment, which is mutually agreed to by the Parties. The Proposed Order
3 and Judgment approving the Settlement shall include a provision that the Action is dismissed with
4 prejudice, which shall constitute a final and binding resolution of Plaintiff's claims herein. The
5 Judgment shall bar Plaintiff, all Aggrieved Employees, and the State of California (including the
6 LWDA) from filing or continuing to prosecute any civil action asserting any of the PAGA
7 Released Claims against Defendant or the Released Parties. The Judgment also shall bar any
8 other person or allegedly aggrieved employee acting on behalf of the State of California
9 (including the LWDA) from seeking or recovering any civil penalty provided by the Labor Code,
10 including without limitation any civil penalty provided by Labor Code section 2699(a) or (f),
11 from Defendant or any of the Released Parties based on any act or omission alleged in the Action
12 or that could have been alleged in the operative complaint in the Action based on any violation of
13 the Labor Code occurring during the PAGA Period.

14 32. **Termination of Settlement Agreement**. If the Court does not approve the
15 settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or
16 if appellate review is sought and, on such review, the Court's decision is materially modified or
17 reversed, or if one or more of the material terms of the Settlement Agreement is not approved or
18 is materially modified or reversed or found to be invalid, then either of the Parties shall have the
19 right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in
20 which case the Settlement Agreement shall have no force or effect, and the Parties shall be
21 deemed to have reverted to their respective status as of the date and time immediately prior to the
22 execution of this Settlement Agreement. However, if the Court declines to approve the Settlement
23 Agreement as drafted, the Parties agree to attempt in good faith to amend the Settlement
24 Agreement to resolve the Court's concerns with the Settlement Agreement, before either Party
25 terminates the Settlement Agreement.

26 33. **Judgment**. As part of the Joint Stipulation of Settlement or motion to approve the
27 Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the
28 Action in accordance with the terms of the Settlement, retains jurisdiction over the Action for the

purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against Pilot Painting and the Released Parties. The judgment will release and bar Plaintiff's Released Claims and the PAGA Released Claims as to Plaintiff, the State of California, the LWDA and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

34. **Settlement Administrator.** The Parties have mutually selected Phoenix Settlement Administrators, Inc. to handle the administration of this settlement, subject to approval by the Court.

35. **Notice to Aggrieved Employees.**

No later than fifteen (15) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). The Aggrieved Employees List shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, total pay periods worked for Pilot Painting in California during the PAGA Period, and Social Security number, to the extent available from Pilot Painting's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the settlement in conformity with the Court's orders. Pilot Painting will in good faith compile from its records the Aggrieved Employees List and provide it to the Settlement Administrator in a computer-readable format, such as a Microsoft Excel spreadsheet.

No later than twenty-one (21) calendar days after receipt of the Gross Settlement Amount from Defendant, the Settlement Administrator will mail the Employee Payments under cover letter, substantially in the form attached hereto as "**Exhibit A**" ("Cover Letter"), to each of the Aggrieved Employees identified on the Aggrieved Employees List. The Cover Letter will be in English and Spanish. Prior to mailing the Cover Letter, the Settlement Administrator shall check the addresses provided in the Aggrieved Employees List using the United States Postal Service's National Change of Address database, and update the addresses for known address changes. Should any of the mailings to the Aggrieved Employees of their Cover Letter and Employee Payments be returned as undeliverable within thirty (30) calendar days of mailing, the Settlement

1 Administrator will have five (5) calendar days after it receives the returned undeliverable mail to
2 search for a more current address for the Aggrieved Employee (via a skip trace or other
3 reasonable method) and re-mail the Cover Letter and Employee Payments to any alternative or
4 updated address obtained by the Settlement Administrator.

5 The Settlement Administrator shall distribute payments for the Attorneys' Fees, the
6 Litigation Costs, the Settlement Administration Costs, the Employee Payments, and the LWDA
7 Payment within twenty-one (21) calendar days after the Gross Settlement Amount is deposited
8 with the Settlement Administrator. All payments provided for by this Settlement Agreement shall
9 be made by the Settlement Administrator in accordance with this Settlement Agreement and the
10 Court's order approving this settlement.

11 Each Aggrieved Employee will be issued one check for his or her Employee Payment
12 which will expire one hundred and eighty (180) calendar days from the date the checks are issued
13 by the Settlement Administrator. After the 180 day-period, the Settlement Administrator shall
14 cancel all checks that have not been cashed or deposited and remit funds associated with such
15 canceled checks to the State of California, Labor Workforce and Development Agency, in the
16 name associated with each Aggrieved Employee whose Employee Payment checks are canceled.

17 **V. MISCELLANEOUS PROVISIONS**

18 36. **No Impact on Employee Benefit Plans.** Neither the Settlement Agreement nor
19 any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the settlement will
20 modify any previously credited hours or service under any employee benefit plan, policy, or
21 bonus program sponsored by Pilot Painting. Such amounts will not form the basis for additional
22 contributions to, benefits under, or any other monetary entitlement under Pilot Painting's
23 sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this
24 Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis,
25 as salary, earnings, wages, or any other form of compensation for the purposes of any Pilot
26 Painting benefit plan, policy, or bonus program. Pilot Painting retains the right, if necessary, to
27 modify the language of its benefit plans, policies, and bonus programs to effect this intent, and to
28 make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours

1 worked,” “hours paid,” “hours of service,” or any similar measuring term as defined by applicable
2 plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any
3 other purpose, and that additional contributions or benefits are not required by this Settlement
4 Agreement.

5 37. **Tax Consequences**. Plaintiff and Aggrieved Employees will be solely responsible
6 for correctly characterizing any compensation received under the settlement on his/her personal
7 income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts
8 paid to them under the settlement. Plaintiff, Pilot Painting, Plaintiff’s Counsel, and Defendant’s
9 Counsel make no representations or warranties with respect to tax consequences of any payment
10 under this Settlement Agreement, do not intend anything contained in this Settlement Agreement
11 to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement
12 be relied upon as such.

13 38. **Governing Law**. This Settlement Agreement shall be construed under and
14 governed by the laws of the State of California. This Settlement Agreement shall be deemed to
15 have been entered into in California, and all questions of validity, interpretation, or performance
16 of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall
17 be governed by California law. If any legal or equitable action or arbitration is necessary to
18 enforce the terms of this Settlement Agreement, it shall be brought in the State of California,
19 County of Los Angeles.

20 39. **Entire Agreement**. This Settlement Agreement constitutes the entirety of the
21 Parties’ settlement terms. No other prior or contemporaneous written or oral agreements may be
22 deemed binding on the Parties. The Parties each acknowledge and represent that no promise or
23 representation not contained in this Settlement Agreement has been made to them, and
24 acknowledge and represent that this Settlement Agreement contains the entire understanding
25 between them and contains all terms and conditions pertaining to the compromise and settlement
26 of the Action and PAGA Released Claims.

27 40. **Judgment and Continued Jurisdiction**. The Parties agree that this Settlement
28 Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure

section 664.6, and the Court, to the fullest extent of the law, shall retain exclusive and continuing jurisdiction over this Action, over all Parties, and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement.

41. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties, subject to approval by the Court.

42. **Authorization to Enter into Binding Settlement Agreement.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Pilot Painting and to bind Pilot Painting to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind him to the terms and conditions of this Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement and/or mediation privileges and/or confidentiality provisions that otherwise might apply under federal or state law.

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

44. **Execution and Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

45. **Acknowledgement of Mutual Drafting and that the Settlement is Fair,**

1 **Adequate, and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate,
2 and reasonable settlement of the Action, and have arrived at this settlement after arm's-length
3 negotiations by experienced counsel. The Parties further acknowledge that they are each
4 represented by competent counsel and that they have had an opportunity to consult with their
5 counsel regarding the fairness and reasonableness of this settlement. The Parties agree that the
6 terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-
7 length negotiations and that neither Party shall be considered the "drafter" of this Settlement
8 Agreement for purposes of having terms construed against that Party. The Parties have had a full
9 opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly,
10 this Settlement Agreement will not be construed more strictly against one Party merely by virtue
11 of the fact that it may have been prepared by counsel for one of the Parties, it being recognized
12 that, because of the arm's-length negotiations between the Parties, all Parties have contributed to
13 the preparation of this Settlement Agreement.

14 46. **Invalidity of Any Provision.** Before declaring any provision of this Settlement
15 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
16 extent possible consistent with applicable precedents, so as to define all provisions of this
17 Settlement Agreement valid and enforceable.

18 47. **Severability.** If any term or provision of this Settlement Agreement is held to be
19 invalid or unenforceable, provided that the essential terms and conditions of this Settlement
20 Agreement for each Party remain valid, binding and enforceable, the remaining portions of this
21 Settlement Agreement will continue to be valid, and will be performed, construed, and enforced
22 to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed
23 amended and limited in accordance with the intent of the Parties, as determined from the face of
24 the Settlement Agreement, to the extent necessary to permit the maximum enforceability or
25 validation of the term or provision.

26 48. **No Waiver.** No waiver of any condition or covenant contained in this Settlement
27 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
28 to imply or constitute a further waiver by such Party of the same or any other condition, covenant,

1 right, or remedy.

2 49. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate
3 in good faith and execute all documents to the extent reasonably necessary to effectuate the terms
4 of this Settlement Agreement. The Parties and their counsel will cooperate with each other and
5 use their best efforts to implement the settlement. If the Parties are unable to reach agreement on
6 the form or content of any document needed to implement the settlement, or on any supplemental
7 provisions that may become necessary to effectuate the terms of this settlement, the Parties may
8 seek the assistance of the Court to resolve such disagreement.

9
10 Dated: 2/24/2022

DocuSigned by:
Frederick McClure
E379A7B6536F4C0...
Frederick McClure

11
12
13
14 Dated: 3/9/2022

**POWER MAINTENANCE SERVICES, INC.
DBA PILOT PAINTING & CONSTRUCTION**

By: *[Signature]*

Its: *President*

15
16 **APPROVED AS TO FORM:**

17
18 Dated: 2/24/2022

MOON & YANG, APC

By: *[Signature]*

Kane Moon

Lilit Ter-Astvatsatryan

Attorneys for Plaintiff, Frederick McClure

21
22
23 Dated: _____

HILL, FARRER & BURRILL, LLP

By: _____

James A. Bowles

Elissa L. Gysi

Richard S. Zuniga

Attorneys for Defendant, Power Maintenance Services, Inc.
dba Pilot Painting & Construction

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA, 37TH FLOOR
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

right, or remedy.

49. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the settlement. If 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 this settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

Dated: 2/24/2022

DocuSigned by:
Frederick McClure
Frederick McClure

POWER MAINTENANCE SERVICES, INC.
DBA PILOT PAINTING & CONSTRUCTION

Dated: 3/9/2022

By: *[Signature]*
Its: President

APPROVED AS TO FORM:

Dated: 2/24/2022

MOON & YANG, APC

By: *[Signature]*
Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff, Frederick McClure

Dated: 3/15/22

HILL, FARRER & BURRILL, LLP

By: *[Signature]*
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