

FILED/ENDORSED
Clerk of the Superior Court
NOV 20 2023
NOV 22 2023
By D. CIMMINO
DEPUTY CLERK

Joseph Lavi, Esq. Bar No. 209776
jlavi@lelawfirm.com
Vincent C. Granberry, Esq. Bar No. 276483
vgranberry@lelawfirm.com
William Tran, Esq. Bar No. 335908
wtran@lelawfirm.com
John Brown, Esq. Bar No. 233605
jbrown@lelawfirm.com
Lavi & Ebrahimian, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone 310-432-0000
Fax No. 310-432-0001

Attorneys for Plaintiff JESUS CALDERON
And other aggrieved employees

Sarah E. Ross, Bar No. 252206
sross@littler.com
Jyoti Mittal, Bar No. 288084
jmittal@littler.com
Emily J. Atherton, Bar No. 239837
eatherton@littler.com
LITTLER MENDELSON, P.C.
2049 Century Park East
5th Floor
Los Angeles, California 90067.3107
Telephone: 310-553-0308
Fax No.: 310-553-5583

Attorneys for Defendant
VESTAS-AMERICAN WIND TECHNOLOGY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO

JESUS CALDERON, on behalf of himself and
other aggrieved employees,

Plaintiff,

v.

VESTAS-AMERICAN WIND TECHNOLOGY,
INC.; and DOES 1 to 100, inclusive,

Defendant.

Case No. FCS059324

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF
PAGA REPRESENTATIVE ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE ALESIA JONES

Complaint Filed: December 2, 2022

File By Fax

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of the
2 Court pursuant to the California Rules of Court, that the Settlement of this Action shall be effectuated
3 upon and subject to the following terms and conditions.

4 This Joint Stipulation and Settlement Agreement of PAGA Representative Action
5 (“Stipulation of Settlement” or “Settlement Agreement”) made by and between plaintiff Jesus
6 Calderon (“Plaintiff”), on the one hand, and Defendant Vestas-American Wind Technology, Inc.
7 (“Defendant”) on the other hand. (Plaintiff and Defendant are, collectively, the “Parties.”)

8 THE PARTIES STIPULATE AND AGREE as follows:

9 **Definitions**

10 1. **“Approval”** means the Court’s order granting approval of the Settlement.
11 2. **“Court”** means the Superior Court of California, County of Solano.
12 3. **“Defendant’s Counsel”** means Sarah E. Ross, Jyoti Mittal, and Emily J. Atherton of
13 Littler Mendelson P.C.

14 4. **“Effective Date”** shall mean the later of the following events: five (5) calendar days
15 after the period for filing any appeal, writ, or other appellate proceeding opposing Approval and
16 Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed, *i.e.*,
17 65 days from the date the court grants final approval, enters Judgment, and notice of entry of judgment
18 is filed; or, if any appeal, writ, or other appellate proceeding opposing Final Approval has been filed
19 within that timeframe; five (5) business days after any appeal, writ, or other appellate proceedings
20 opposing the Settlement has finally and conclusively dismissed with no right to pursue further
21 remedies or relief. No funding of the Settlement shall occur until at least ten (10) calendar days after
22 the Effective Date.

23 5. **“Gross PAGA Settlement Amount”** means Two Hundred and Ten Thousand Dollars
24 (\$210,000.00), which includes all attorneys’ fees and costs/expenses petitioned by PAGA Counsel;
25 any enhancement award and PAGA payments to Plaintiff; costs of administration of the Settlement;
26 and any payments to the California Labor & Workforce Development Agency (“LWDA”) or the
27 PAGA Members. Defendant will owe nothing more than this Gross Settlement Amount under this
28 Settlement Agreement.

6. **“Individual Lawsuit”** means the action entitled *Jesus Calderon v. Vestas-American Wind Technology, Inc.*, pending in the Superior Court of the State of California, Solano and bearing Case No. FCS058932

7. **“Individual Settlement Agreement”** means and refers to the separate, confidential settlement agreement wherein the terms of Plaintiff Jesus Calderon’s settlement of his individual non-PAGA claims are outlined.

8. **“Judgment”** means the judgment entered by the Court based upon Approval.

9. **“Lawsuit”** means Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Jesus Calderon v. Vestas-American Wind Technology, Inc.*, pending in the Superior Court of the State of California, Solano and bearing Case No. FCS059324.

10. **“Mediator’s Proposal”** means the mediator’s proposal accepted by the Parties on October 3, 2023.

11. **“MOU”** means and refers to the Memorandum of Understanding previously entered into between the Parties.

12. **“Net PAGA Fund”** means the allocation of the remaining Gross PAGA Settlement Amount, less the Court approved amounts for PAGA Counsel’s attorneys’ fees and costs, Settlement Administrator’s costs and Representative Enhancement.

13. **“PAGA Counsel”** means Lavi & Ebrahimian, LLP.

14. **“PAGA Members”** refers to the current and former individuals who were employed by Defendant as non-exempt employees in California at any time from September 27, 2021, through the Release End Date.

15. **“PAGA Notice”** mean Plaintiff’s September 27, 2022 letter to Defendant and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

16. **“PAGA Period”** means all current and former individuals who were employed by Defendant as non-exempt employees in California at any time from September 27, 2021, through the Release End Date.

17. **“Released Claims”** means the claims being released as described in Paragraph 40 below.

18. **“Release End Date”** means the period which will end either at the date of the Approval, or 60 days from the date of the acceptance of the Mediator’s Proposal (December 1, 2023), whichever is sooner.

19. **“Released Parties”** means Defendant and any of its past, present and future direct or indirect parents, subsidiaries, predecessors, successors and affiliates, including but not limited to, as well as each of its past, present and future officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant.

20. **“Representative Enhancement”** means the amount approved by the Court not to exceed One Thousand Dollars (\$1,000) for Plaintiff’s efforts to represent the allegedly aggrieved employees.

21. **“Settlement”** means the disposition of the Lawsuit effected by this Settlement Agreement, the Individual Settlement Agreement and the Judgment.

22. **“Settlement Administrator”** means CPT Group.

RECITALS

23. On October 3, 2023, following exchange and extensive review of relevant documents and class data, the Parties engaged in a full-day mediation with experienced wage and hour class action mediator, Steven J. Serratore, Esq., which resulted in a settlement of the Lawsuit, except for the individual non-PAGA claims of Jesus Calderon, which will be memorialized in a separate confidential settlement agreement.

24. Defendant denies any liability or wrongdoing of any kind whatsoever associated with the claims in the Lawsuit, and further denies that, for any purpose other than settling the Lawsuits representative treatment is appropriate for the Lawsuit.

25. It is the Parties’ desire to fully, finally and forever settle, compromise and discharge all disputes and claims arising from or related to the allegations in the Lawsuit.

26. It is the Parties’ intention that this Stipulation of Settlement shall constitute a full and complete settlement and release of all Released Claims (as defined in Paragraphs 40 and 41) against all Released Parties.

27. It is the Parties' intention that this Settlement shall not become effective until the Effective Date, as defined in Paragraph 4, above.

28. PAGA Counsel have conducted a thorough investigation into the facts of the Lawsuit, including an extensive review of relevant documents and data, and have diligently pursued an investigation of the PAGA Members' claims against Defendant. Based on its and their own independent investigation and evaluation, PAGA Counsel are of the opinion that the Settlement with Defendant is fair, reasonable and adequate and is in the best interest of the PAGA Members in light of all known facts and circumstances, including the risks of significant delay, the class not being certified, and the defenses asserted by Defendant. Defendant and Defendant's Counsel also agree that the Settlement is in the best interests of the PAGA Members.

29. The Parties agree to cooperate and take all steps necessary and appropriate to consummate this settlement in accordance with the terms of this Stipulation of Settlement:

TERMS OF SETTLEMENT

30. In consideration of the mutual covenants, promises and agreements set forth herein, the Parties agree, subject to the Court's approval, to the terms herein.

31. It is agreed by and between Plaintiff and Defendant that the Lawsuit and any claims, demands, liabilities, penalties, damages or causes of action of any kind whatsoever claimed by Plaintiff on behalf of himself, and/or the PAGA Members arising out of the disputes which are the subject of the Lawsuit, be settled and compromised, subject to the terms and conditions set forth in this Stipulation of Settlement and the Court's Approval.

PAGA MEMBERS

32. For purposes of this Settlement Agreement only, the Parties stipulate that the cohort of aggrieved employees are the PAGA Members.

GROSS PAGA SETTLEMENT AMOUNT

33. As consideration for the Released Claims, (1) at least 60 calendar days after the Effective Date, Defendant agrees to fund the Gross Settlement Amount; and (2) within 30 calendar days after the funding, the Settlement Administrator shall distribute these funds as follows:

a. Defendant agrees to pay Two Hundred and Ten Thousand Dollars

1 (\$210,000.00) (the “Gross PAGA Settlement Amount”) to resolve the claims of the PAGA Members.
2 The Gross PAGA Settlement Amount will include all payments to be made to the LWDA, the PAGA
3 Members, attorneys’ fees, costs approved by the Court, and any enhancement award to Plaintiff
4 approved by the Court. In no event shall Defendant be liable for the payment of any amounts
5 exceeding those set forth above in this section.

6 b. The Net PAGA Fund will be distributed to all PAGA Members. There will be
7 no claims process and no reversion.

8 c. The Net PAGA Fund shall be distributed to the LWDA (75% of the Net PAGA
9 Fund) and the PAGA Members (25% of the Net PAGA Fund).

10 d. Once Defendant has deposited the Gross Settlement Amount with the
11 Settlement Administrator, it will be deemed to have satisfied all terms and conditions under this
12 Settlement Agreement, shall be entitled to all protections afforded to Defendant under this Settlement
13 Agreement, and shall have no further obligations under the terms of the Settlement Agreement
14 regardless of what occurs with respect to those sums. Additionally, none of the Released Parties shall
15 have any further obligation or liability to the Plaintiff or PAGA Members under this Settlement
16 Agreement.

17 34. Defendant represents that the extrapolated number of pay periods through
18 approximately October 3, 2023, did not exceed 4,715 (“Pay Periods”). If Pay Periods through the
19 Approval, or 60 days from the date of the acceptance of the Mediator’s proposal (December 1, 2023),
20 whichever is sooner, exceed the Pay Periods count by more than 13% (613 pay periods), then at the
21 option of Defendant, Defendant shall either increase the Gross PAGA Settlement Amount as explained
22 below or elect to move the end date for the PAGA Period to the latest date before the Approval, or 60
23 days from the date of the acceptance of the Mediator’s proposal, that does not exceed 5,328
24 (“Escalation Election”). If Defendant elects to extend the PAGA Period to a date wherein the total
25 pay periods is more than 5,328, then the PAGA Gross Settlement Amount will be increased by the
26 additional pay periods above 5,328 *pro rata*.

ATTORNEYS' FEES AND EXPENSES

35. **Attorneys' Fees:** PAGA Counsel may petition the Court for attorneys' fees not to exceed Sixty-Nine Thousand Nine Hundred Ninety-Three Dollars and No Cents (\$69,993.00) (33.33%) from the Gross PAGA Settlement Amount, plus reasonable costs/expenses not to exceed Twenty Thousand Dollars (\$20,000), subject to approval by the Court. Attorneys' fees paid pursuant to this Settlement Agreement shall be inclusive of all fees in this matter. Defendant agrees not to object to Settlement PAGA Counsel's fees up to 33.33% from the Gross PAGA Settlement Amount and reasonable costs/expenses approved by the Court not to exceed Eighty-Nine Thousand Nine Hundred Ninety-Three Dollars and No Cents Dollars (\$89,993.00), which shall also be included in the Gross PAGA Settlement Amount. Any reduction by the Court of Settlement PAGA Counsel's claimed attorneys' fees and/or reasonable costs/expenses shall not be sufficient grounds to void the PAGA Settlement. Any reduction by the Court of PAGA Counsel's claimed attorneys' fees and/or reasonable costs/expenses shall not be sufficient grounds to void the Settlement.

36. **Representative Enhancement:** Defendant agrees not to object to an enhancement award to Plaintiff from the Gross PAGA Settlement Amount. Subject to the Court's approval, the amount of the enhancement award will not exceed (\$1,000.00) for Plaintiff. The Representative Enhancement is meant to be consideration for the release by Plaintiff as to any and all PAGA claims and as a service award for representing others. Any reduction by the Court of the Representative Enhancement shall not be sufficient grounds to void the Settlement.

37. **Net PAGA Fund Distribution:** The Net PAGA Fund shall be allocated on a per pay period basis as follows:

a. The Net PAGA Fund shall be allocated to each PAGA Member working at least one pay period during the PAGA Period and attributing one (1) share for each pay period worked during the PAGA Period. The total number of respective shares shall be added up and divided by the total number of shares across the PAGA Period to get the percentage share for that PAGA Member.

b. Upon the funding of the Gross Settlement Amount, all PAGA Members shall be deemed to have released their PAGA claims in their entirety. All PAGA payment distributions to PAGA Members shall be treated as non-wages for tax purposes.

RELEASE

a. The Claims set forth in the Lawsuit, specifically: Violation of the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) for: (1) Failure to pay minimum and regular rate wages; (2) Failure to pay overtime compensation; (3) Failure to provide meal periods or provide premiums in lieu thereof; (4) Failure to provide rest periods or provide premiums in lieu thereof; (5) Failure to pay timely wages at termination; (6) Failure to pay timely wages during employment; (7) Failure to provide accurate itemized wage statements; and those claims predicated on the same or similar facts and/or claims alleged in the Lawsuit and/or PAGA Notice as well as any claims that could have been pled under California common law, the federal law, and the California Business and Professions Code which arise from the same or similar facts pled in the Lawsuit or letter to the LWDA concerning the Plaintiff or the PAGA Members, and claims for interest and penalties, as well as any claims under the California Labor Code for violations of Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197 *et seq.*, 1197.1, 1198, 2698 *et seq.*, 2802,

1 applicable IWC Wage Orders; and California Code of Regulations, Title 8, section 11000 *et seq.*;

2 b. Any claims for injunctive relief, declaratory relief, restitution, fraudulent
3 business practices or punitive damages alleged or which could have been alleged under the facts,
4 allegations and/or claims pleaded in the complaints filed as part of the Lawsuit; and

5 c. With respect to the Released Claims only, this release also includes such claims
6 whether known or known, whether anticipated or unanticipated, including such claims that PAGA
7 Members did not know or suspect to exist in their favor that accrued on or before the date of Approval.

8 d. The claims set forth in subparagraphs (a) through (c) hereinabove shall be
9 collectively referred to as the "Released Claims."

10 41. In addition, as to the claims of Plaintiff, the Released Claims further include, without
11 limitation, all claims alleged in the Individual Lawsuit, and any and all claims whatsoever regarding
12 Plaintiff's respective employment and/or the termination of employment including, but not limited to,
13 any claims for wages, bonuses, severance pay, vacation pay, penalties, employment benefits, stock
14 options, violation of any personnel policy, any claims based on discrimination, harassment, unlawful
15 retaliation, violation of public policy, or damages of any kind whatsoever, arising out of any common
16 law torts, contracts, express or implied, any covenant of good faith and fair dealing, any theory of
17 wrongful discharge, any theory of negligence, any theory of retaliation, any legal restriction on any
18 Defendant's right to terminate the employment relationship, or any federal, state, or other
19 governmental statute, executive order, regulation or ordinance, or common law, or any other basis
20 whatsoever, to the fullest extent provided by law. Plaintiff shall be deemed to have, and by operation
21 of the Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law
22 the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar
23 provision under federal or state law that purports to limit the scope of a general release. Plaintiff, for
24 himself, has read Section 1542 of the Civil Code of the State of California, which provides as follows:

25
26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
27 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
28 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

43. In conjunction with this stipulation, the Parties will submit a proposed order to the Court, requesting that the Court enter an Order and Judgment (“PAGA Settlement Approval”):

- a. Approving PAGA Counsel's request for attorneys' fees and costs;
- b. Approving PAGA Counsel's request for the Representative Enhancement;
- c. Approving CPT Group as Settlement Administrator and expenses for settlement administration not to exceed Six Thousand Dollars and No Cents(\$6,000);
- d. Approving this Settlement Agreement and its terms, including but not limited to, entering judgment fully and finally releasing and discharging the Released Parties as to all PAGA Members and the LWDA and forever barring and enjoining the assertion of the Released Claims as to all such PAGA Members and the LWDA, as detailed herein.

44. Defendant agrees to provide the Settlement Administrator, within 60 calendar days of the Effective Date of the PAGA Settlement Agreement, a database containing the following information: (1) the full name, and last known address and full social security number of all PAGA Members; and (2) the information necessary to determine the estimated settlement allocation to each PAGA Employee, including without limitation, the total number of pay periods worked by each PAGA Employee within the relevant PAGA Period.

45. Upon receipt of this information, the Settlement Administrator shall: (i) run the names of all PAGA Members through the National Change of Address (“NCOA”) database to determine any updated addresses for PAGA Members; and (ii) update the addresses of any PAGA Member for whom an updated address was found through the NCOA search.

47. Any Settlement Packets returned to the Settlement Administrator as undelivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Settlement Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Settlement Packet to the PAGA Member promptly, and in any event within three (3) business days of obtaining the updated address.

48. A PAGA Member must cash his or her individual settlement payment check within 180 calendar days after it is mailed to him or her. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the PAGA Member at his or her correct address. If any PAGA Member's individual settlement payment check is not cashed within 120 days of its initial issuance to the PAGA Member, the Settlement Administrator will send the PAGA Member a postcard, dated 120 days from the initial mailing, informing him or her that, unless the check is cashed within 60 days of the date of this postcard, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this interim notice, the Settlement Administrator will keep an accounting of such funds, including the identification of the PAGA Member. The Settlement Administrator will then transmit said funds to the State of California State Controller's Office Unclaimed Property Fund, in the PAGA Member's name to be held as unclaimed property for the PAGA Member. In such event, the PAGA Member will nevertheless remain bound by the Settlement Agreement and the releases contained herein.

49. **Confidentiality:** Plaintiff, PAGA Counsel, and Defendant's Counsel will not make any

1 public disclosure of the Settlement until the filing of this Stipulation of Settlement, except that Plaintiff
2 and PAGA Counsel may disclose the Settlement to the LWDA prior to the filing of the motion for
3 approval of the PAGA settlement. However, the terms of Plaintiff's separate, individual confidential
4 settlement agreement will be subject to the confidentiality of the Individual Settlement Agreement.
5 Plaintiff and PAGA Counsel represent that they have not made any disclosures which are contrary to
6 the terms of the MOU. PAGA Counsel will take all steps necessary to ensure that Plaintiff is aware
7 of, and will encourage him to adhere to, the restriction against any public disclosure of the Settlement
8 until after this Stipulation of Settlement is filed with the Court.¹ Thereafter, Plaintiff and PAGA
9 Counsel agree not to publicize the terms of this Settlement with the media, including but not limited
10 to, any newspaper, journal, magazine, website and/or online reporter of settlements or on any website.

11 **50. Voiding Agreement:** Plaintiff or Defendant may terminate this Settlement if after
12 submitting the Settlement Agreement for approval to the Court, the Court declines to enter an order
13 approving the PAGA settlement or judgment in substantially the form submitted by the Parties, or if
14 the Settlement Agreement, as agreed, does not become final because of appellate court action. If the
15 Court requests non-material changes to the Settlement Agreement, the Parties will cooperate in good
16 faith to make such changes and to seek approval of an amended Settlement Agreement, which shall
17 not be grounds for termination of the Settlement. The terminating Party shall give to the other party
18 (through its/his counsel) written notice of its decision to terminate no later than 14 calendar days after
19 receiving notice that one of the enumerated events has occurred. Termination shall have the following
20 effects:

21 a. The Settlement Agreement shall be terminated and shall have no force or effect,
22 and no Party shall be bound by any of its terms.

23 b. In the event the Settlement Agreement is terminated, Defendant shall have no
24 obligation to make any payments to any party, PAGA Member or attorney, except to the extent that
25 the Settlement Administrator has incurred costs, in which case the Party electing to terminate the
26 Settlement Agreement shall pay all costs incurred by the Settlement Administrator through the date of
27 _____

28 ¹ Again, the terms of the separate, individual confidential settlement agreement are subject to the
confidentiality provisions contained in the Individual Settlement Agreement.

1 termination.

2 c. Any Approval order and Judgment shall be vacated.

3 d. The stipulation of settlement and all negotiations, statements and proceedings
4 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be
5 restored to their respective positions prior to the settlement.

6 e. Except as otherwise discoverable, neither this Settlement Agreement nor any
7 ancillary documents, actions, statements or filings in furtherance of settlement (including all matters
8 associated with the mediation) shall be admissible or offered into evidence in the Lawsuit, or any other
9 action for any purpose whatsoever.

10 51. **Non-Admission of Liability:** Nothing in this Settlement Agreement shall operate or
11 be construed as an admission of any liability. In entering into this Settlement Agreement, Defendant
12 does not admit, and specifically denies, that it has violated any federal, state, or local law; violated any
13 regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations
14 or legal requirements; breached any contract, violated or breached any duty; or engaged in any
15 misrepresentation or deception. The Parties agree that the Court has not evaluated manageability of
16 any PAGA claim. Defendant denies all liability for the claims alleged in the Lawsuit and that any
17 PAGA Member is owed any damages or penalties, or is entitled to any relief arising from the alleged
18 claims. The Parties have entered into this Settlement Agreement to avoid the burden and expense of
19 further litigation. Pursuant to California Evidence Code section 1152, this Settlement Agreement is
20 inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement
21 Agreement. If Approval does not occur, the Parties agree that this Settlement Agreement is void, but
22 remains protected by California Evidence Code section 1152. The Parties consent to the continuing
23 jurisdiction of the Court for the purposes of enforcement of the Settlement, pursuant to California
24 Code of Civil Procedure section 664.6.

25 52. **Warranties and Representations:** Each of the Parties to this Settlement Agreement
26 and or their agent covenants and warrants that (a) they have full power and authority to enter into and
27 consummate all transactions contemplated by this Settlement Agreement and have duly authorized the
28 execution, delivery and performance of this Settlement Agreement; (b) the person executing this

1 Settlement Agreement has the full right, power and authority to enter into this Settlement Agreement
2 on behalf of the party for whom he/she has executed this Settlement Agreement, and the full right,
3 power and authority to execute any and all necessary instruments in connection herewith, and to fully
4 bind such party to the terms and obligations of this Settlement Agreement; and (c) they acknowledge
5 that they have been represented by counsel throughout all negotiations that preceded the execution of
6 this Settlement Agreement, and that this Settlement Agreement has been executed with the consent
7 and advice of counsel. Further, Plaintiff and PAGA Counsel warrant and represent that there are no
8 liens on the Settlement Agreement, and that Defendant may distribute funds to the PAGA Members,
9 PAGA Counsel, and the Plaintiff as provided by this Settlement Agreement.

10 **53. Waiver and Amendment:** The Parties may not waive, amend, or modify any
11 provision of this Settlement Agreement except by a written agreement signed by all counsel, and
12 subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement
13 Agreement will not constitute a waiver of any other provision.

14 **54. Res Judicata:** Plaintiff agrees that the Released Parties can assert this Settlement
15 Agreement and the Approval and Judgment as a defense to any future claims for penalties brought by
16 the LWDA or any claims brought under PAGA on behalf of the LWDA for any Released Claims
17 alleged to have occurred during the Exempt PAGA Period and the Non-Exempt PAGA Period. The
18 Parties intend this PAGA settlement and the resulting judgment to have claim preclusive effect, issue
19 preclusive effect, estoppel effect and to otherwise bar a representative action to the fullest extent
20 permissible under applicable law if the LWDA or any allegedly aggrieved employee were to bring a
21 subsequent claim on behalf of the LWDA for any act or omission based on the same factual predicates
22 as the *Calderon* PAGA Lawsuit and alleged to have occurred during the PAGA Period.

23 **55. Enforcement Action:** In the event that one more of the Parties institutes any legal
24 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
25 Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful
26 Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
27 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

28 **56. Notices to Counsel:** All notices, demands, and other communications to be provided

concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant:

Sarah E. Ross, Esq.
sross@littler.com
Jyoti Mittal, Esq.
jmittal@littler.com
Emily J. Atherton, Esq.
eatherton@littler.com
Littler Mendelson P.C.
2049 Century Park East, 5th Floor,
Los Angeles, CA 90067-3107

if to Plaintiff:

Joseph Lavi, Esq.
jlavi@lelawfirm.com
Vincent C. Granberry, Esq.
vgranberry.com
William Tran, Esq.
wtran@lelawfirm.com
Lavi & Ebrahimian, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211

57. **Binding Agreement:** This Agreement shall be binding and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal representatives.

58. **Ongoing Cooperation:** The Parties shall support the Settlement, execute all documents and take such steps as are reasonably necessary to effectuate the Settlement and the terms of this Settlement Agreement.

59. **Governing Law:** This Settlement Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California.

60. **Severability:** The Parties to this Settlement Agreement agree, covenant, and represent that each and every provision of this Settlement Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, the Parties further agree, covenant, and represent that each and every provision of this Settlement Agreement shall be considered severable, except for the release provisions of Paragraph 40 of this Agreement. If a court of competent jurisdiction finds the release provisions of Paragraph 40 of this Settlement Agreement

1 to be unenforceable or invalid as against a PAGA Member or the LWDA, then this Settlement
2 Agreement shall become voidable by Defendant, at Defendant's election but still subject to
3 Defendant's obligation in Paragraph 49 to cooperate in good faith to make such changes and to seek
4 approval of an amended Settlement Agreement. If a court of competent jurisdiction finds any
5 provision, other than the release provisions of Paragraph 40, or part thereof to be invalid or
6 unenforceable for any reason, that provision, or part thereof, shall be severed from the Settlement
7 Agreement, and all of the remaining provisions of this Settlement Agreement shall remain in full force
8 and effect.

9 **61. Entire Agreement:** This Settlement Agreement contains the entire agreement between
10 the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations,
11 presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating
12 to the subject matters hereof.

13 **62. Counterparts:** This Settlement Agreement may be executed by one or more Parties on
14 any number of separate counterparts and delivered electronically, and all of said counterparts taken
15 together shall be deemed to constitute one and the same instrument.

16 **63. Captions:** The captions and headings in this Settlement Agreement are inserted for the
17 reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
18 provisions of this Settlement Agreement.

19 **64. Mutual Preparation of Agreement:** The Parties have had a full opportunity to
20 negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement
21 Agreement shall not be construed more strictly against one party than another merely by virtue of the
22 fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because
23 of the arms-length negotiations between the Parties, all Parties have contributed to the preparation of
24 this Settlement Agreement.

25
26
27
28 ///

1 **IT IS SO AGREED.**

2 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
3 Settlement Agreement as of the date(s) set forth below.

4 Dated: November 17, 2023

VESTAS-AMERICAN WIND
TECHNOLOGY, INC.

Michelle Gessaro

Michelle Gessaro
VP, People & Culture Americas

8 Dated: November 17, 2023

VESTAS-AMERICAN WIND
TECHNOLOGY, INC.

Darin Franco

Darin Franco
Sr. Director, Head of South Region

13 Dated: November __, 2023

JESUS CALDERON

Plaintiff and PAGA Representative

16 **APPROVED AS TO FORM:**

18 Dated: November __, 2023

LAVI & EBRAHIMIAN, LLP

Joseph Lavi, Esq.
William Tran, Esq.
Attorneys for Plaintiff
JESUS CALDERON

22 Dated: November __, 2023

LITTLER MENDELSON, P.C.

Sarah E. Ross
Jyoti Mittal
Emily J. Atherton
Attorneys for Defendant
VESTAS-AMERICAN WIND TECHNOLOGY,
INC.

28 4854-5461-6974.1 / 081880-1019

1 **IT IS SO AGREED.**

2 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
3 Settlement Agreement as of the date(s) set forth below.

4 Dated: November __, 2023

VESTAS-AMERICAN WIND
TECHNOLOGY, INC.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Michelle Gessaro
VP, People & Culture Americas

Dated: November __, 2023

VESTAS-AMERICAN WIND
TECHNOLOGY, INC.

Darin Franco
Sr. Director, Head of South Region

Dated: November 13, 2023

JESUS CALDERON

DocuSigned by:
58346EB4FAA3416...
Plaintiff and PAGA Representative

APPROVED AS TO FORM:

Dated: November 13, 2023

LAVI & FRAHIMIAN, LLP

DocuSigned by:
Joseph Lavi
871E0169FCF244D...
Joseph Lavi, Esq.
William Tran, Esq.
Attorneys for Plaintiff
JESUS CALDERON

Dated: November __, 2023

LITTLER MENDELSON, P.C.

Sarah E. Ross
Jyoti Mittal
Emily J. Atherton
Attorneys for Defendant
VESTAS-AMERICAN WIND TECHNOLOGY,
INC.

4854-5461-6974.1 / 081880-1019