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WILLIAM COLEMAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LAKE

WILLIAM COLEMAN, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PROENERGY CRAFTS, INC., a Missouri
corporation; EVAPTECH, INC., a Maryland
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CV423136

[Assigned for all purposes to the Hon.
Michael S. Lunas, Dept. 1]

**DECLARATION OF SCOTT M. LIDMAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 23, 2024
Time: 9:00 a.m.
Dept.: 1

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel
3 for the named Plaintiff William Coleman (“Plaintiff”) and the proposed Settlement Class in the
4 above-captioned matter. I am a member in good standing of the bar of the State of California and
5 am admitted to practice in this Court. I have personal knowledge of the facts stated in this
6 declaration and could testify competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated
8 *summa cum laude*. During law school, I worked as a summer associate for the international
9 employment law firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on
11 employment litigation. In September 1998, I began working as an associate attorney at the
12 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
13 website is the largest law firm in the world exclusively devoted to representing management in
14 employment, employee benefits and labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day,
16 which was at the time one of the largest international firms in the world. During my employment
17 at Jones Day, I worked exclusively in the labor and employment department. In or around 2003,
18 I went to work at the law firm of Loeb & Loeb, again working exclusively in the Labor &
19 Employment department. In 2008, I returned to Littler Mendelson, was promoted to Shareholder
20 in 2009, and from 2008 until the end of 2017, I practiced exclusively labor and employment law,
21 with a strong emphasis and most of my time working on wage and hour class actions venued in
22 both state and federal courts. During that time and my legal career in general, I also worked on a
23 number of single and multi-plaintiff wage and hour matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the
25 class actions that I was staffed on, and ran many on my own both as an Of Counsel and as a
26 Shareholder. In particular, I received a wide-array of wage and hour class action experience
27 performing the following types of tasks: drafting demurrers, motions to strike and/or dismiss;
28 removing actions from state court to federal court; drafting and responding to written discovery;

1 drafting and opposing discovery related motions; arguing discovery related motions; drafting
2 motions to consolidate related matters; interviewing putative class members and obtaining
3 declarations in connection with class certification; drafting oppositions to motions for class
4 certification; drafting motions for decertification following class certification; conducting
5 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of
6 prevailing at class certification and potential damages resulting from such claims; drafting
7 mediation briefs; serving as the primary contact to in-house counsel; deposing named plaintiffs
8 and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large
10 wage and hour class actions. In short, I played an integral role in all aspects of litigation from the
11 inception of a matter through and beyond class certification. I also supervised the work of several
12 junior attorneys who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and
14 PAGA actions that I performed substantial work on while I was a shareholder at Littler
15 Mendelson:

- 16 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx,
17 United States District Court, Central District of California, Honorable Gary
18 Klausner, presiding¹.
- 19 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
20 Superior Court, County of San Bernardino, Honorable Michael Sachs,
21 presiding.
- 22 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California
23 Superior Court, County of Los Angeles, Honorable Mel Red Recana,
24 presiding.

27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States
28 Court of Appeals for the Ninth Circuit as well as the United States Supreme Court.

- ▶ *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-MAN, United States District Court, Central District of California, Honorable Percy Anderson, presiding.
- ▶ *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612, California Superior Court, County of Los Angeles, Honorable Elihu Berle, presiding.²
- ▶ *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United States District Court, Central District of California, Honorable Percy Anderson, presiding.
- ▶ *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United States District Court, Central District of California, Honorable Percy Anderson, presiding.
- ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California Superior Court, County of Los Angeles, Honorable Jane Johnson, presiding.³
- ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California Superior Court, County of Orange, Honorable Thierry Patrick Colaw, presiding.
- ▶ *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-GPC-KSC, United States District Court, Southern District of California.⁴

² My work on this matter included proceedings not only in the trial court, but also before the California Courts of Appeal and the California Supreme Court.

³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court,
2 County of Solano, Honorable Paul Berman, presiding.
- 3 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC
4 California Superior Court, County of Orange, Honorable William Claster,
5 presiding.
- 6 ▶ *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC,
7 California Superior Court, County of Orange, Honorable William Claster,
8 presiding.
- 9 ▶ *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States
10 District Court, Central District of California, Honorable Andrew Guilford,
11 presiding.⁵
- 12 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
13 United States District Court, Central District of California, Honorable
14 Margaret Morrow, presiding.
- 15 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
16 United States District Court, Central District of California, Honorable
17 Margaret Morrow, presiding.
- 18 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx,
19 United States District Court, Southern District of California, Honorable
20 John A. Houston, presiding.
- 21 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United
22 States District Court, Central District of California, Honorable Margaret
23 Morrow, presiding.
- 24 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United
25 States District Court, Central District of California, Honorable Margaret
26 Morrow, presiding.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx,
2 United States District Court, Northern District of California.
- 3 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-
4 CTL, California Superior Court, County of San Diego, Honorable Jeffrey
5 B. Barton, presiding.
- 6 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California
7 Superior Court, County of Santa Clara.
- 8 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California
9 Superior Court, County of Los Angeles, Honorable Terry Green, presiding.
- 10 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California
11 Superior Court, County of San Francisco.
- 12 ▶ *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States
13 District Court, Northern District of California, Honorable Richard
14 Seeborg, presiding.

15 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open
16 my own law firm, Lidman Law, APC, to represent employees with work-related claims, including
17 primarily wage and hour claims and almost exclusively on a class-action basis. I am the President
18 and Shareholder of Lidman Law. Currently, over ninety percent (90%) of my practice is
19 dedicated exclusively to the prosecution of wage and hour class actions, and I am currently
20 responsible for prosecuting over sixty-five (65) wage and hour class actions filed in State courts
21 throughout California, with several of them having been removed to Federal courts. I believe that
22 my professional experience renders me more than qualified to serve as class counsel in this
23 lawsuit involving claims of underpaid overtime and minimum wages, meal and rest period
24 violations, and derivative penalty claims. Not only have I litigated dozens of wage and hour cases
25 throughout my career involving similar claims, including the wage and hour class actions
26 identified above, I have litigated similar claims from both plaintiff and defense perspectives. As
27 a result, I am able to realistically assess and evaluate the facts and legal arguments that can be
28 made in pursuit and defense of similar wage and hour claims, as well as those facts and arguments

1 in support and in opposition to class certification. Consequently, I am able to appreciate the
2 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

3 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case
4 No. BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B.
5 Kuhl presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court,
6 County of Los Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances,*
7 *Inc.*, Case No. 30-2017-00964213-CU-OE-CXC, California Superior Court, County of Orange,
8 Honorable Judge William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No.
9 CIVDS1814412, California Superior Court, County of San Bernardino, Honorable Judge David
10 Cohn presiding; *Molina v. Mader News, Inc.*, Case No. BC685960, California Superior Court,
11 County of Los Angeles, Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v.*
12 *Salamander Fire Protection, Inc.*, Case No. BC688326, California Superior Court, County of
13 Los Angeles, Honorable Judge William F. Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*,
14 Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge
15 Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California
16 Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran*
17 *v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside,
18 Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*,
19 Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge
20 Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872,
21 California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko
22 presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County
23 of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing,*
24 Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable
25 Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No.
26 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G.
27 Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California
28 Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding;

1 *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California
2 Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding;
3 *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California
4 Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v.*
5 *WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara,
6 Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No.
7 BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S.
8 Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-
9 06036-PSG-SS, United States District Court for the Central District of California, the Honorable
10 Judge Philip S. Gutierrez presiding.

11 9. As co-lead counsel for Plaintiff and the proposed Settlement Class, I have been
12 intimately involved in every aspect of this case from its inception through the present, and I
13 believe that the proposed Settlement is a favorable result for the Settlement Class Members under
14 the circumstances presented.

15 10. Defendants ProEnergy Crafts, Inc. and Evaptech, Inc. (hereinafter referred to as
16 “Defendants”) provide third-party solutions for the energy industry, including technical services,
17 field services, operations and maintenance, asset management, and monitoring and diagnostics.
18 On September 16, 2022, Plaintiff filed a putative class action complaint against Defendants in
19 Lake County Superior Court. On September 16, 2022, Plaintiff sent a letter to the California
20 Labor Workforce Development Agency (“LWDA”) regarding Defendants’ alleged Labor Code
21 violations and Plaintiff’s intent to bring a claim for civil penalties under the Labor Code Private
22 Attorneys General Act (“PAGA”). On March 5, 2024, Plaintiff sent a supplemental PAGA letter
23 to the LWDA. After exhausting his administrative requirements under the PAGA, Plaintiff filed
24 a First Amended Class and Representative Action Complaint on May 9, 2024 adding causes of
25 action for: (i) failure to provide accurate wage statements; (ii) failure to timely pay all wages upon
26 separation of employment; and (iii) civil penalties under the PAGA. As such, Plaintiff’s operative
27 complaint alleges that Defendants: (1) failed to pay all minimum wages owed; (2) failed to pay
28 all overtime wages owed; (3) failed to provide all legally required meal periods; (4) failed to

1 authorize and permit all legally required rest periods; (5) failed to provide accurate, itemized wage
2 statements; (6) failed to timely pay all wages upon separation of employment; (7) engaged in
3 unlawful business practices; and (8) are liable for civil penalties under the PAGA. True and
4 correct copies of Plaintiff's LWDA letters are attached hereto as **Exhibit 1**.

5 11. After agreeing to participate in early mediation, Defendants informally produced
6 time records and payroll data for a 20% sampling of the putative class as well as its wage and
7 hour policies and other relevant documents and information relevant to the claims alleged in
8 advance of mediation. Here, the statistical analysis of the time punch and payroll data was used
9 for the limited purpose of determining the predominance of rounding and meal period violations
10 in support of Plaintiff's claims that Defendants maintained policies and practices during the
11 relevant time period of not paying its non-exempt employees for all time worked and not
12 providing all legally compliant meal and rest periods. Indeed, based on the time punch data
13 produced which included actual time punches and rounded paid hours, Plaintiff was able to
14 conduct a rounding analysis and conclude that it was widespread during the entire relevant time
15 period. The Settlement Class members did similar work and were paid under the same wage and
16 hour policies and procedures. Given these circumstances, the experiences of a subset of
17 employees – the 20% sampling for each subclass- can be probative as to the experiences of all of
18 the Settlement Class. *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 938 (As in *Tyson*,
19 under these circumstances the percentage of the subset of employees who signed meal agreements
20 lacking the required revocation language during a given time period is probative as to the
21 percentage of the class that signed meal agreements lacking the required revocation language.)
22 Further, if all Settlement Class members brought lawsuits for unpaid wages and/or meal period
23 violations, they would rely on timekeeping records similar to the ones in this sampling which also
24 supports a finding that the sampling is statistically reliable.

25 In addition to the representative sampling, Defendants provided a list of hire and
26 termination dates for Plaintiff to calculate the relevant metrics and data points at issue. This
27 information coupled with the representative data sampling, enabled Plaintiff to extrapolate to the
28 entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at
issue, including unpaid wages and penalties potentially owed for alleged minimum and overtime

wages, and meal and rest and unpaid wages violations. Ultimately, this discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendants' defenses thereto.

12. On February 28, 2024, after extensive research and analysis, including a detailed analysis of Defendants' potential exposure by Plaintiff, a mediation was held with Tripper Ortman, a well-respected wage and hour class action mediator. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses, as well as the legal basis for the claims and defenses. Ultimately, the Parties agreed in principle on a class-wide resolution. *Id.* Thereafter, in the weeks that followed, the Parties signed the Stipulation of Class Action and PAGA Settlement ("Settlement"). A true and correct copy of the Settlement is attached hereto as **Exhibit 2**. The proposed Class Notice is attached as Exhibit A to the Settlement.

13. If the Court approves this Settlement, Defendants will pay a Gross Settlement Amount ("GSA") of \$380,000.⁶ Significantly, this Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$380,000.00
Minus Court-approved attorneys' fees (1/3 of GSA):	\$126,666.66
Minus Court-approved, verified costs (up to):	\$30,000.00
Minus Court-approved Class Representative Service Award (up to):	\$7,500.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA civil penalties:	\$20,000.00
Net Settlement Amount ("NSA"):	\$185,833.34

⁶ If the number of workweeks during the Class Period exceeds 5,306 by more than ten (10) percent, meaning that the actual workweeks are more than 5,836, EvapTech shall have the option of either: (1) increasing the amount of the Gross Settlement Amount proportionally for the excess increase in the total number of workweeks beyond the 5,836 (so that the Gross Settlement Amount will increase by 1% for every 1% increase in workweeks over the 10% threshold, the increase to be paid by EvapTech) or (2) modifying the applicable end date of the Class Period to a date prior to incurring the pro rata increase to keep the maximum workweeks at 5,836 (which is 10% more than 5,306) and not to trigger the escalator clause. See Settlement ¶ 8.

1 Defendants shall fund the Gross Settlement Amount and the corresponding amounts
2 necessary to pay the payroll taxes on the Wage Portion of the Individual Class Payments as
3 determined by the Administrator within 30 calendar days of the Effective Date. Lidman Decl., ¶
4 13, Exh. 2 Settlement ¶ 4.1.3. “Effective Date” means the date by when both of the following
5 have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the
6 Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following
7 occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court
8 enters Judgment; (b) if one or more Participating Class Members object to the Settlement, the
9 day after the deadline for filing a notice of appeal from the Judgment; or, (c) if a timely appeal
10 from the Judgment is filed, the day after the appellate court affirms the Judgment and issues
11 a remittitur. Settlement, ¶ 1.19.

12 After deducting amounts for the Court-approved attorneys’ fees and verified costs,
13 Service Award to Plaintiff, Settlement Administrator costs, and the PAGA civil penalties, the
14 Settlement requires Defendants to pay a Net Settlement Amount (“NSA”) of at least **\$185,833.34**
15 to all Settlement Class Members who do not timely opt out. This amount does not include the
16 \$5,000.00 Aggrieved Amount to be paid to the PAGA Employees.

17 14. According to Defendant, there are approximately 430 total Settlement Class
18 members defined as:

19 All persons who worked for EvapTech through ProEnergy and American
20 Professional Staffing Solutions, LLC as non-exempt, hourly paid employees in
21 California at any time during the Class Period. For purposes of this Settlement
22 Agreement, the “Class Period” shall the period from September 16, 2018, through
23 the date in which the Court signs an order granting Preliminary Approval of the
24 Settlement.

25 Thus, the average Individual Settlement Awards (assuming there are no opt-outs) is
26 projected to be approximately **\$432.17, exclusive of any PAGA civil penalties.** Based on these
27 formulas, with approximately 5,306 workweeks during the Class Period, the Settlement equates
28 to about \$35.02 per workweek (\$185,833.34/5,306).

1 In addition, PAGA Employees is defined as: “All persons who worked for EvapTech
2 through ProEnergy and American Professional Staffing Solutions, LLC as non-exempt, hourly
3 paid employees in California at any time during the PAGA Period. For purposes of this
4 Settlement Agreement, the “PAGA Period” shall the period from September 16, 2021, through
5 the date in which the Court signs an order granting Preliminary Approval of the Settlement.” The
6 average individual portion of PAGA Amount is approximately \$21.19. There are about 99 pay
7 periods during the PAGA Period, which equates to about \$50.51 per pay period (\$5,000/99).

8 15. Settlement Class members’ claims arise from Defendants’ common, uniform
9 policies and practices that applied to Settlement Class members during the class period.
10 Specifically, Plaintiff alleged that Defendants’ common and uniform policies and practices
11 resulted in the following violations: (1) failure to pay all minimum wages owed; (2) failure to
12 pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure
13 to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized
14 wage statements; (6) failure to timely pay all wages upon separation; (7) unlawful business
15 practices; and (8) liability for civil penalties under the PAGA.

16 16. As described in the accompanying Motion for Preliminary Approval, Plaintiff
17 alleges that Defendants failed to compensate its non-exempt employees for all time worked
18 because Defendants would keep track of Plaintiff’s time worked and would unlawfully
19 round/shave time worked such that Plaintiff would not be fully paid for all time worked. This
20 time-shaving and/or rounding practice utilized by Defendants was not even-handed over time
21 and would almost exclusively round and shave in Defendants’ favor such that Plaintiff was
22 routinely underpaid for all his time worked. Additionally, during the relevant time period,
23 Defendants paid their non-exempt employees bonuses and per diems but failed to include these
24 payments in the regular rate, which resulted in a systematic underpayment of overtime wages to
25 Plaintiff and the other non-exempt employees. As a result of Defendants’ failure to properly track
26 the time worked by Plaintiff and other non-exempt employees, Defendants failed to pay Plaintiff
27 and other non-exempt employees for all minimum and overtime wages owed. Plaintiff’s expert
28 calculated Defendants’ exposure at \$382,491.

1 17. Defendants contend that they compensated Settlement Class members for all of
2 their time worked, and any unpaid time was *de minimis* and therefore non-compensable.
3 Defendants further contend that they did not have a rounding policy or practice during the
4 relevant time period. Further, Defendants contend any bonuses paid during the relevant time
5 period were discretionary and did not to be included in the regular rate of pay for overtime
6 purposes. In light of these defenses, Plaintiff discounted the maximum exposure by 60% for the
7 risk of non-certification, and an additional 45% to account for Defendants' defenses on the merits
8 to arrive at an estimated exposure of approximately \$84,148.02.

9 18. Plaintiff alleges that he and Settlement Class Members were not provided with all
10 legally-required meal periods in compliance with California law due to Defendants' unlawful
11 meal period policies/practices. Due to Plaintiff's job duties, Plaintiff was often prevented from
12 taking meal periods that commenced before the end of the 5th hour of work and/or which were at
13 least 30 minutes in length. Plaintiff's retained expert calculated Defendants' maximum exposure
14 for meal period violations at **\$603,030**.

15 19. Defendants counter that they have always provided non-exempt employees with
16 an opportunity to take legally compliant meal periods, and any non-compliant meal periods
17 reflected in employee timekeeping records were solely the result of employee choice, rather than
18 any policy or practice of Defendants. Defendants also point out that they are only required to
19 "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they
20 have always done so. Defendants contend Plaintiff's meal period claim is not suited for class
21 certification and individual inquiries would be required to assess which employees took non-
22 compliant meal periods, how many meal periods were non-compliant or missed, and the reasons
23 why a particular employee took a non-compliant meal period or missed a meal period during a
24 particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk
25 of non-certification, and an additional 45% to account for Defendants' defenses on the merits to
arrive at an estimated exposure of \$198,999.90.

26 20. Plaintiff alleges that he and other Settlement Class Members were not authorized
27 and permitted to take all required rest periods due to Defendants' rest period policies/practices
28 which fail to authorize and permit all rest periods for every four hours worked, *or major fraction*

1 *thereof*. Specifically, Plaintiff worked shifts in excess of 3.5 hours, but was not authorized or
2 permitted to take a ten-minute paid rest period for every four (4) hour period worked, or *major*
3 *fraction thereof* as a result of the work demands imposed by Defendants. Plaintiff's retained
4 expert calculated Defendants' maximum exposure for rest period violations at **\$603,030**.

5 21. Defendants contend they have always maintained and enforced lawful rest period
6 policies and practices, and that Settlement Class Members were authorized and permitted to take
7 all off-duty rest periods in compliance with California law. Defendants argue that Plaintiff's rest
8 period claims are inherently unsuited for class treatment as it requires an individualized inquiry
9 into whether each Settlement Class member was in fact authorized and permitted to take a
10 compliant rest period, which would devolve into an unmanageable series of mini-trials.
11 Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-
12 certification, and an additional 55% to account for Defendants' defenses on the merits to arrive
13 at an estimated exposure of \$94,977.23.

14 22. Plaintiff further alleges that Defendants issued inaccurate wage statements in
15 violation of Labor Code § 226 as a result of the alleged unpaid wages and meal and rest period
16 premium wages described above. Specifically, Plaintiff contends that this conduct violated
17 Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not
18 include all hours worked and the rate at which they were being paid. Therefore, Plaintiff's
19 retained expert calculated Defendants' maximum exposure at **\$6,600**.

20 23. Defendants argue that their alleged wage statement violations could not be shown
21 to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
22 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code
23 § 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated exposure by
24 50% for a risk of non-certification and an additional 55% for a risk of being unsuccessful on the
25 merits to arrive at an estimated total of \$1,485.00.

26 24. Plaintiff alleges that Defendants are also liable for waiting time penalties under
27 Labor Code section 203 as a result of its failure to pay all wages upon separation of employment.
28 Based on the data provided by Defendants, all Settlement Class Members separated their
employment with Defendants during the relevant time period who could be entitled to waiting

1 time penalties. Therefore, Plaintiff's retained expert calculated Defendants' maximum exposure
2 at **\$3,234,724**.

3 25. Defendants assert they have strong defenses to the waiting time claim because
4 there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of
5 penalties. Accordingly, Plaintiff discounted the maximum exposure by 50% for the risk of non-
6 certification, and an additional 65% to account for Defendants' defenses on the merits to arrive
7 at an estimated exposure of approximately \$566,076.70.

8 26. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing
9 alleged Labor Code violations. Plaintiff calculated Defendants' exposure at approximately
10 **\$9,900** (99 pay periods x \$100 initial violation rate).

11 27. Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that
12 his underlying claims will fail. Defendants also maintain that, given their good faith defenses,
13 this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to
14 find Defendants liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum
15 exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional 35% to
16 account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of
17 approximately \$3,217.50.

18 28. Using these estimated figures for each of the claims described above, Plaintiff
19 predicted the realistic total recovery for the Settlement Class would be approximately
20 \$948,904.35. Lidman Decl., ¶ 28. The proposed settlement of \$380,000.00 therefore represents
21 approximately 40% of the reasonably forecasted recovery for the Settlement Class. *Id.*
22 Preliminary approval is appropriate as the settlement will provide tangible monetary relief to
23 Settlement Class Members, and will still provide an average recovery to Settlement Class
24 Members of over \$400.00.

25 29. Here, Class Counsel will also apply for an attorneys' fees award of one-third of
26 the GSA, which is currently estimated to be \$126,666.66, and up to \$30,000 in verified costs
27 reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking
28 complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class

1 Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing
2 Plaintiff's claims, conducting legal research, reviewing Defendants' documents and policies,
3 analyzing Settlement Class Members' timekeeping data and payroll records, preparing for and
4 attending mediation, negotiating and revising the long-form Settlement, preparing this Motion,
5 and otherwise litigating the case. Class Counsel expect to expend additional attorney time in
6 attending the hearing on this Motion, overseeing the Notice process and fielding questions from
7 Settlement Class members, preparing the final approval papers and attending the Final Approval
8 hearing.

9 30. Plaintiff has provided written approval of the split of attorneys' fees in this action.

10 31. Plaintiff will seek a service award of \$7,500.00 at the time of seeking final
11 approval, and I believe this is reasonable given Plaintiff's efforts in this case and the risks he
12 undertook on behalf of the Settlement Class members, including the risk that she could be liable
13 for Defendant's costs if this case was unsuccessful. Plaintiff was integral in the prosecution of
14 this action, by, among other things, providing substantial factual information and documents to
15 Class Counsel, attending multiple meetings and conferences with Class Counsel to discuss the
16 claims and theories at issue in the litigation, and otherwise actively participating in the
17 prosecution of his claims.

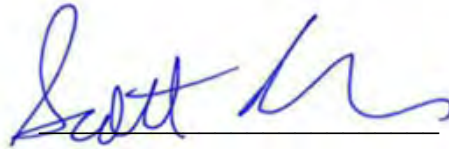
18 32. Although the parties engaged in informal discovery throughout this action, the
19 parties still had significant discovery to complete in formal litigation had the matter not settled.
20 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the
21 wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment
22 ruling. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties
23 would incur considerably more attorneys' fees and costs through a possible decertification
24 motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying
25 expense.

26 33. I have directed my office to submit a copy of the instant Motion for Preliminary
27 Approval and all supporting documents via the LWDA's website on the same date concurrently
28 herewith and will have a supplemental proof of service filed after the Motion for Preliminary

1 Approval and all supporting documents are submitted to the LWDA.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 Executed on July 31, 2024 at El Segundo, California.

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8 Scott M. Lidman
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EXHIBIT 1

EXHIBIT 1

March 5, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

ProEnergy Crafts, Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Evaptech, Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: *William Coleman v. ProEnergy Crafts, Inc. and Evaptech, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents William Coleman in claims arising from his employment with ProEnergy Crafts, Inc., a Missouri corporation and Evaptech, Inc., a Maryland corporation (collectively, “Defendants”). Mr. Coleman is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below and in his prior correspondence to the Labor and Workforce Development Agency (“LWDA”) dated September 16, 2022 (the “LWDA Letter”). Attached hereto as **Exhibit A** is a true and correct copy of the LWDA Letter and is incorporated herein by reference. By this letter, Mr. Coleman hereby supplements his prior LWDA Letter. The purpose of the LWDA Letter and the instant supplement letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the LWDA of the specific provisions of the Labor Code allegedly violated.

The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Coleman intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendants’ all current and former non-exempt, hourly employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

By this letter, Mr. Coleman hereby supplements his prior LWDA Letter (**Exhibit A**) by asserting all of the same allegations and claims asserted in the original letter against Evaptech, Inc. Furthermore, Mr. Coleman further supplements his original letter by alleging that Defendants have also committed the additional Labor Code violations as asserted below.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Coleman and other Aggrieved Employees all of their final wages at the time of their separation of employment, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Coleman and other aggrieved employees was willful and, consequently, entitles Mr. Coleman and other similarly aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendant failed to pay their final wages after their separation, up to a maximum of thirty days.

Labor Code § 226 - Wage Statement Violations

As a result of Defendants' failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Coleman and Defendants' current and former non-exempt employees.

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Coleman and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total rest and meal period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Mr. Coleman and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

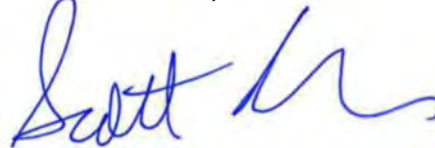
As an "aggrieved employee," Mr. Coleman will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein against Defendants as well as those set forth in his original letter (**Exhibit A**). Based on Mr. Coleman's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Coleman and other Aggrieved Employees all overtime compensation earned;
- b) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Coleman and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Coleman and other Aggrieved Employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Coleman and other Aggrieved Employees;
- e) Defendants violated Labor Code § 204 by failing to pay Mr. Coleman and other Aggrieved Employees all earned wages at least twice during each calendar month; and
- f) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Coleman and other Aggrieved Employees;
- g) Defendants violated Labor Code § 226 by failing to furnish Mr. Coleman and other Aggrieved Employees with accurate and compliant itemized wage statements; and
- h) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Coleman and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman, Esq.

EXHIBIT A

EXHIBIT A

September 16, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

ProEnergy Crafts, Inc.
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: *William Coleman v. ProEnergy Crafts, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents William Coleman in claims arising from his employment with ProEnergy Crafts, Inc., a Missouri corporation (“Defendant”). Mr. Coleman is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Coleman intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendant’s all current and former non-exempt, hourly employees in California who have worked for Defendant, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Coleman was employed by Defendant as an hourly, non-exempt employee and assigned to work in California in 2020. During his employment with Defendant, Defendant directed Mr. Coleman to work at a power plant located in Middletown, California, where he was responsible for installing cooling towers, among other job duties.

Throughout Mr. Coleman’s employment with Defendant in California, Mr. Coleman was generally scheduled to work Monday through Friday from approximately 6:30 a.m. or 7:00 a.m. to approximately 5:00 p.m., and sometimes worked shifts of 12 or more hours. During at least a portion of Mr. Coleman’s employment, Mr. Coleman was not fully paid for all time worked due to Defendant’s timekeeping policies and practices which failed to at all times require Mr. Coleman to record his actual work time. Specifically, during at least a portion of the relevant time period, Defendant had policies and practices of having supervisors record the start and stop time for employees. As a result of this policy or practice, Defendant failed to properly account for and track all time

actually worked by Mr. Coleman, and also failed to pay Mr. Coleman all required minimum wages. Further, because Mr. Coleman would often work more than eight (8) hours per day and/or forty (40) hours per week, Defendant's timekeeping policies and practices also deprived Mr. Coleman of overtime wages owed to him. Defendant's timekeeping policies and practices applied to Mr. Coleman and other non-exempt, hourly employees. As a result, Mr. Coleman and other non-exempt, hourly employees were deprived of all required minimum and overtime wages due.

Additionally, during his employment with Defendant in California, Mr. Coleman was not fully paid for all time worked due to Defendant's timekeeping policies and practices because Defendant would unlawfully shave Mr. Coleman's work time and/or round Mr. Coleman's work time such that Mr. Coleman would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendant was not-even handed over time and would round and/or shave in Defendant's favor such that Mr. Coleman was routinely underpaid for his time worked, including minimum wages. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by the non-exempt, hourly employees, and also failed to pay Mr. Coleman and other non-exempt, hourly employees all required minimum wages. Further, Mr. Coleman and other non-exempt, hourly employees often worked over eight hours in a day and/or 40 hours in a week, and Defendant's policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

While working for Defendant in California, Mr. Coleman routinely worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Mr. Coleman received non-discretionary bonuses, per diems, and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Mr. Coleman and other non-exempt, hourly employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Mr. Coleman and other non-exempt, hourly employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Mr. Coleman and other non-exempt, hourly employees all required overtime wages.

During his employment with Defendant in California, Mr. Coleman was not provided all legally required meal periods due to Defendant's unlawful meal period policies and practices. Throughout his employment with Defendant in California, Mr. Coleman was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide timely uninterrupted, duty-free and timely 30-minute meal periods. In addition, Defendant failed to maintain policies and practices requiring employees to record the start and stop times for meal periods, in violation of California law. As a result of Defendant's unlawful meal period policies and practices, Mr. Coleman and other non-exempt, hourly employees' meal periods were often late or otherwise unlawful. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant's meal period policies and practices failed to provide Mr.

Coleman and other non-exempt, hourly employees with a second, timely meal period of at least 30 minutes in length.

Although Mr. Coleman and other non-exempt, hourly employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Coleman with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant time period, Defendant maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their hourly, non-exempt employees.

Mr. Coleman was also not authorized and permitted to take all legally required paid rest periods due to Defendant's unlawful rest period policies and practices. Specifically, Mr. Coleman worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or major fraction thereof. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant failed to authorize or permit a third ten-minute paid rest period. Accordingly, Defendant's rest period policies and practices fail to authorize and permit Mr. Coleman and other non-exempt, hourly employees to take duty-free 10-minute rest periods for every four hours worked, or *major fraction thereof*.

On those occasions when Mr. Coleman other non-exempt, hourly employees were not authorized and permitted to take all legally-compliant rest periods to which he was entitled, Defendant's policies and practices failed to compensate them with the required rest period premium for each workday in which he experienced a rest period violation as mandated by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the class period, Defendant maintained no payroll code or other mechanism for paying rest period premiums when Defendant failed to provide a legally compliant rest period.

As a result of Defendant's failure to pay all minimum and overtime wages, as well failure to pay all meal and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Coleman and other hourly, non-exempt employees.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order 4 ("Wage Order 4"):

Overtime Violations

Defendant was required to pay Mr. Coleman and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. See Labor Code §§ 1194(a) and 1198; Wage Order 4, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh

day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” This Section further provides, “Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked.” During at least a portion of Mr. Coleman’s employment, Mr. Coleman was not fully paid for all time worked due to Defendant’s timekeeping policies and practices which failed to at all times require Mr. Coleman and other Aggrieved Employees to record his actual work time. Specifically, during at least a portion of the relevant time period, Defendant had policies and practices of having supervisors record the start and stop time for employees. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by Mr. Coleman and other Aggrieved Employees. Because Mr. Coleman would often work more than eight (8) hours per day and/or forty (40) hours per week, Defendant’s timekeeping policies and practices also deprived Mr. Coleman and other Aggrieved Employees of overtime wages owed to them. As described above, Mr. Coleman received non-discretionary bonuses, per diems, and/or other forms of pay not excludable as a matter of law when calculating an employee’s regular rate (“Incentive Pay”). Despite Defendant’s payment of Incentive Pay to Mr. Coleman and other Aggrieved Employees, Defendant’s policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Mr. Coleman and other Aggrieved Employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Mr. Coleman and other Aggrieved Employees all required overtime wages.

Minimum Wage Violations

Defendant was required to pay Mr. Coleman and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; Wage Order 4, § 4. Mr. Coleman and other aggrieved employees were not paid for all hours worked due to Defendant’s timekeeping and compensation practices. As alleged above, during at least a portion of Mr. Coleman’s employment, Mr. Coleman was not fully paid for all time worked due to Defendant’s timekeeping policies and practices which failed to at all times require Mr. Coleman and other Aggrieved Employees to record their actual work time. Specifically, during at least a portion of the relevant time period, Defendant had policies and practices of having supervisors record the start and stop time for employees. As a result of this policy or practice, Defendant failed to properly account for and track all time actually worked by Mr. Coleman and other Aggrieved Employees, and also failed to pay Mr. Coleman and other Aggrieved Employees all required minimum wages.

Meal Period Violations

As alleged above, Defendant failed to provide Mr. Coleman and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 4, § 11. Throughout his employment with Defendant in California, Mr.

Coleman was not provided all required meal periods due to Defendant's meal period policies/practices which fail to provide timely uninterrupted, duty-free and timely 30-minute meal periods. In addition, Defendant failed to maintain policies and practices requiring employees to record the start and stop times for meal periods, in violation of California law. As a result of Defendant's unlawful meal period policies and practices, Mr. Coleman and other Aggrieved Employees' meal periods were often late or otherwise unlawful. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant's policies and procedures failed to provide Mr. Coleman and other Aggrieved Employees with a second, timely meal period of at least 30 minutes in length. Therefore, Mr. Coleman and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. See Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Mr. Coleman and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Mr. Coleman and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Mr. Coleman and other Aggrieved Employees to take all required rest periods. See Labor Code §§ 226.7 and 516; Wage Order 4, § 12. Specifically, Mr. Coleman worked shifts in excess of 3.5 hours, but was not authorized or permitted to take a ten-minute paid rest period for every four (4) hour period worked, or major fraction thereof. Additionally, during times when Mr. Coleman worked in excess of 10.0 hours per shift, Defendant failed to authorize or permit a third ten-minute paid rest period. Accordingly, Defendant's rest period policies and practices fail to authorize and permit duty-free rest periods for every four hours worked, or *major fraction thereof*. As a result, Mr. Coleman and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. See Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

As an "aggrieved employee," Mr. Coleman will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Coleman's own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Coleman and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Coleman and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Coleman and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Coleman and other Aggrieved Employees;
- e) Defendant violated Labor Code § 204 by failing to pay Mr. Coleman and other Aggrieved Employees all earned wages at least twice during each calendar month; and
- f) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Coleman and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Elizabeth Nguyen, Esq.

EXHIBIT 2

EXHIBIT 2

STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff William Coleman (“Plaintiff”) and Defendants ProEnergy Crafts, Inc. (“ProEnergy”) and EvapTech, Inc. (“EvapTech”) (ProEnergy and EvapTech are referred to collectively hereinafter as “Defendants”) (Plaintiff, ProEnergy and EvapTech are collectively referred to as the “Parties”),

1. DEFINITIONS

1.1. “Action” means the matter of *William Coleman v. ProEnergy Crafts, Inc. et al.*, Lake County Superior Court Case No. CV423136.

1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to request the Court appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. “Aggrieved Employee” means all persons who worked for EvapTech through ProEnergy and/or American Professional Staffing Solutions, LLC (“APS Solutions”) as non-exempt, hourly paid employees in California during the PAGA Period.

1.5. “Class” means all persons who worked for EvapTech through ProEnergy and/or APS as non-exempt, hourly paid employees in California at any time during the Class Period.

1.6. “Class Counsel” means Scott Lidman and Milan Moore of Lidman Law, APC, and Paul K. Haines of Haines Law Group, APC.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel to be paid from the Gross Settlement Amount as payment for reasonable attorneys’ fees and costs, respectively, incurred to prosecute the Action through Settlement and to obtain approval of the Settlement, including any appeals.

1.8. “Class Data” means each Class Member’s name, last-known mailing address, Social Security number, and number of Class Workweeks and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member.

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the Court-approved Notice of Class Action Settlement and Hearing Date for Final Court Approval, to be mailed to Class Members without material variation from the version attached as Exhibit A hereto.

1.12. “Class Workweek” means any week during the Class Period in which a Class Member received payment for wages for work performed in California within the week.

1.13. “Class Period” means the period from September 16, 2018, through the date in which the Court signs an order granting Preliminary Approval of the Settlement, unless modified pursuant to Section 8 of this Agreement.

1.14. “Class Representative” means the named Plaintiff, William Coleman, seeking Court approval to serve as the Class Representative.

1.15. “Class Representative Service Payment” means the additional amount the Class Representative will be paid out of the Gross Settlement Amount for initiating the Action and providing services in support of the Action.

1.16. “Court” means the Superior Court of California, County of Lake.

1.17. “Defendants” means Defendants ProEnergy Crafts, Inc. and EvapTech, Inc.

1.18. “Defense Counsel” means Ian B. Wieland and David G. Litman of Sagaser Watkins & Wieland PC, and Nicole R. Roysdon and Brian G. Lee of Wilson Turner Kosmo LLP.

1.19. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court enters Judgment; (b) if

one or more Participating Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.20. “Final Approval” means the Court’s Order Granting Final Approval of the Settlement.

1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.22. “Gross Settlement Amount” means \$380,000.00, which is the total amount Defendants agree to pay under the Settlement, subject to (voluntary) increase as provided in Section 8 of this Agreement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment, and the Administrator’s Expenses.

1.23. “Individual Class Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount, calculated as provided in Section 3.2.4 of this Agreement.

1.24. “Individual PAGA Payment” means an Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties, calculated as provided in Section 3.2.8 of this Agreement.

1.25. “Judgment” means the judgment entered by the Court upon Granting Final Approval of the Settlement.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code §2699, subd. (i), to receive the LWDA PAGA Payment.

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code §2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “Operative Complaint” means the First Amended Complaint, filed by Plaintiff on or around May 9, 2024.

1.31. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

1.32. “PAGA Pay Period” means any pay period during the PAGA Period in which an Aggrieved Employee received payment for wages for work performed in California within the pay period.

1.33. “PAGA Period” means the period from September 16, 2021, through the date the Court signs an Order Granting Preliminary Approval of the Settlement.

1.34. “PAGA Notices” means Plaintiff William Coleman’s September 16, 2022 and March 5, 2024 letters to Defendants and the LWDA providing notice pursuant to Labor Code §2699.3, subd. (a).

1.35. “PAGA Penalties” means the total amount of PAGA civil penalties (\$20,000) to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00) and 75% to LWDA (\$15,000.00) in settlement of PAGA claims.

1.36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.37. “Plaintiff” means William Coleman, the named plaintiff in the Action.

1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval of the Settlement.

1.40. “Released Class Claims” means the Released Claims being released as described in Section 5.4.1 below.

1.41. “Released PAGA Claims” means the Released Claims being released as described in Section 5.4.2 below, which arise and/or are assertable under PAGA.

1.42. “Released Parties” means: Defendants together with their present and former parents, subsidiaries, affiliated and related entities, commonly owned or controlled entities, present and former owners, board members, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for claims released by Plaintiff, or the Released Class Claims and Released PAGA Claims, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other vicarious liability theory including American Professional Staffing Solutions, LLC.

1.43. “Request for Exclusion” means a Class Member’s submission of a written and signed request to be excluded from the class portion of the Settlement.

1.44. “Response Deadline” means 45 days after the Administrator mails Notice to Class Members and Aggrieved Employees (plus an additional 14 days, in the case of Class Members whose Class Notices are resent by the Administrator after being returned as undeliverable), and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, (b) fax, email, or mail an Objection to the Settlement, or (c) submit a Challenge to their Class Workweeks or PAGA Pay Periods.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS

2.1. On September 16, 2022, Plaintiff William Coleman commenced this Action by filing a Class Action Complaint for failure to pay all minimum wages owed, failure to pay all overtime wages owed, failure to provide meal periods, failure to authorize and permit rest periods, and unfair competition. On or around May 9, 2024, Plaintiff filed a First Amended Complaint (which is the Operative Complaint), adding causes of action for Civil Penalties under the Private Attorneys General Act (“PAGA”), for failure to provide accurate itemized wage statements, and for failure to pay all wages upon termination of employment. Defendants deny the allegations in the Operative Complaint and any prior pleadings by Plaintiff, deny any failure to comply with the

law, and deny any liability for the claims alleged in the Operative Complaint and any prior pleadings by Plaintiff, or either of them.

2.2. Pursuant to Labor Code §2699.3, subd. (a), Plaintiff William Coleman gave timely written notice to Defendants and the LWDA by sending the PAGA Notices.

2.3. On February 28, 2024, the Parties participated in an all-day mediation presided over by neutral Tripper Ortman, Esq. which led to this Agreement to settle the Action.

2.4. Prior to mediation, Class Counsel obtained, through formal and informal discovery, the number of putative Class Members, the number of Aggrieved Employees, the number of workweeks, the number of pay periods, sample time records, sample payroll records, written policies, and related information. Class Counsel's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted nor ruled on class certification.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Section 8 below, Defendants will be obligated to pay a Gross Settlement Amount of Three Hundred, Eighty Thousand Dollars and Zero Cents (\$380,000.00) ("Gross Settlement Amount"), inclusive of Individual Class Payments, the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, PAGA Penalties, and the Administration Expenses Payment. Of the Gross Settlement Amount, EvapTech shall pay Two Hundred, Ninety Thousand Dollars and Zero Cents (\$290,000.00) and ProEnergy shall pay Ninety Thousand Dollars and Zero Cents (\$90,000.00). Neither Defendant shall be required to pay or be liable for the other defendant's share. Defendants shall separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, with each Defendant paying a pro rata share based on their respective obligation of the Gross Settlement Amount. With the exception of the employer's payroll taxes and as otherwise provided by Section 8 below, in no event shall Defendants be required to pay anything more than the Gross Settlement Amount.

Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Section 4.1.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$7,500.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Service Payment and agrees to hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division, sharing, or taxation of this payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third of the Gross Settlement Amount, which is currently estimated to be \$126,666.66 (unless the Gross Settlement Amount is increased at EvapTech's sole discretion pursuant to Section 8 below in which case the Class Counsel Fees Payment will increase proportionally) and a Class Counsel Litigation Expenses Payment of not more than \$30,000.00. Defendants will not

oppose requests for these payments provided the requests do not exceed these amounts and the amounts claimed via the Class Counsel Litigation Expenses Payment are recoverable under statute. Plaintiff and/or Class Counsel will file a motion for the Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. With the exception of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, all Parties shall bear their own fees and costs. Defendants and Released Parties shall have no liability to Class Counsel or any other counsel arising from any claim to any portion of the Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and agrees to hold Defendants harmless, and indemnify Defendants, from any dispute or controversy regarding any division, sharing, or taxation of any of these payments.

3.2.3. To the Administrator: An Administration Expenses Payment not to exceed \$10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less than \$10,000.00 or the Court approves payment less than \$10,000.00, the Administrator will allocate the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Workweeks.

3.2.5. Tax Allocation of Individual Class Payments. All Individual Settlement Payments will be allocated as follows: twenty percent (20%) to settlement of wage claims ("Wage Portion") and eighty percent (80%) to settlement of claims for interest and statutory

penalties. The portion allocated to wages shall be reported on an IRS Form W-2 and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator. Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment.

3.2.6. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. Any Non-Participating Class Member who is also an Aggrieved Employee will still receive their Individual PAGA Payment.

3.2.7. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.8. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.9. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1.1. Class Size. Based on a review of their records through February 2024, Defendants estimate that Class Members worked a total of approximately 5,306 workweeks in California during the Class Period.

4.1.2. Class Data. Not later than 21 days after the Court signs an order granting Preliminary Approval of the Settlement, Defendants shall deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.1.3. Funding of Gross Settlement Amount. Defendants shall fund the Gross Settlement Amount and the corresponding amounts necessary to pay the payroll taxes on the Wage Portion of the Individual Class Payments as determined by the Administrator within 30 calendar days of the Effective Date.

4.1.4. Payments from the Gross Settlement Amount. Within 21 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for the Individual Class Payments, Individual PAGA Payments, LWDA PAGA Payment, Administration Expenses Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, and the Administration Expenses Payment shall follow, not precede, disbursement of the Individual Class Payments, Individual PAGA Payments, and the LWDA PAGA Payment.

4.1.5. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S.

Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members and Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment.

4.1.6. The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without a USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, as requested by the Class Member prior to the void date.

4.1.7. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure § 384, subd. (b).

4.1.8. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions, bonuses, vacation plans, sick leave plans, PTO plans, regular rate of pay calculations, or other benefit plan) beyond those specified

in this Agreement.

5. RELEASES OF CLAIMS

5.1 Effective Date of Release. The releases described in this Agreement shall take effect upon the Effective Date. Therefore, Defendants and Released Parties shall have the right to enforce the releases contained in this Agreement against Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA as of the Effective Date, prior to funding the Gross Settlement Amount and employer's payroll taxes and prior to distribution of Individual Settlement Payments, Individual PAGA Payments, and the LWDA PAGA Payment. The releases described in this Agreement may be invalidated after the Effective Date as to any Defendant who fails to fund their share of the Gross Settlement Amount and their share of the employer's payroll taxes by the deadlines set forth in Section 4.1.3 of this Agreement. The releases in this Agreement may not be invalidated as to any Defendant who fully funds their share of the Gross Settlement Amount and their share of the employer's payroll taxes. The statute of limitations on any Released Claims shall be tolled between the Effective Date and the date of Defendants' funding of the Gross Settlement Amount and any employer payroll taxes owed on the Wage Portions of the Individual Class Payments.

5.2 Plaintiff's General Release. Plaintiff, on behalf of himself and on behalf of his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, agrees to release and discharge Defendants and Released Parties from all known and unknown claims of whatever type that Plaintiff has or may have against Defendants and Released Parties through the date of Plaintiff's execution of this Agreement, except for claims to enforce this Agreement or claims that Plaintiff cannot release via a general release as a matter of law, including claims for unemployment and workers' compensation benefits ("Plaintiff's General Release"). Nothing set forth under this Agreement will be construed to exclude the filing of an administrative charge or complaint with the EEOC or NLRB, or participation in an administrative investigation or proceeding, although, to the maximum extent permitted by law, Plaintiff waives any right to monetary relief related to such a charge or complaint.

5.3 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he now knows or believes to be true, which could materially affect his decision to agree to the releases set forth in this Agreement. Nonetheless, Plaintiff voluntarily assumes this risk, and agrees that his General Release shall remain in effect notwithstanding such different or additional discoveries. To this end, Plaintiff expressly waives and relinquishes his rights under California Civil Code §1542 with respect to his General Release, which provides:

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

5.4 Release by Participating Class Members:

5.4.1 Release of Class Claims: As of the Effective Date, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns and estates, shall release Defendants and Released Parties of all claims, rights, demands, liabilities, and causes of action that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint, and which arose or existed during the Class Period, including claims for violation of the California Labor Code or any other State or Federal law, including any statute, regulation, or ordinance imposing liability and/or obligations that could be brought based on the allegations in the Operative Complaint ("Released Class Claims"). Without limiting the foregoing, Released Class Claims shall include:

- i) All claims relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims related to the timeliness of wage payments (whether regular or final wages); all claims relating to the failure to

provide compliant meal, rest, and recovery periods; all claims relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims relating to the provision of wage statements; all claims relating to the failure to maintain accurate employment records; all claims relating to the deduction of wages; and all claims relating to unfair business practices resulting from any of the foregoing.

- ii) All claims arising under California Labor Code §§201, 202, 203, 204, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2699; 8 C.C.R. §11010, Sections 3, 4, 7, 11, 12, and 20; 8 C.C.R. §11030, Sections 3, 4, 7, 11, 12, and 20; 8 C.C.R. §11080, Sections 3, 4, 7, 11, 12, and 20; 8 C.C.R. §11130, Sections 3, 4, 7, 11, 12, and 20; 11140, Sections 3, 4, 7, 11, 12, 18; 8 C.C.R. §3395; California Business and Professions Code §§17200-17208; California Civil Code §§3287, 3288, and 3289; California Code of Civil Procedure §1021.5; and related claims under the applicable provisions of the Fair Labor Standards Act (29 U.S.C. §§201, et seq.).
- iii) All remedies associated with any of the claims described herein, including but not limited to compensatory, consequential, incidental, liquidated, and punitive damages; penalties (whether statutory or civil); restitution; interest; costs; attorneys' fees; injunctive or other equitable relief.
- iv) Notwithstanding the above, the Released Class Claims do not release any claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,

disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4.2 Release of PAGA Claims by Aggrieved Employees: As of the Effective Date, all Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns and estates, shall release Defendants and Released Parties of all claims that are assertable under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint or Plaintiff's PAGA Notices, and which arose or existed during the PAGA Period ("Released PAGA Claims"). Without limiting the foregoing, Released PAGA Claims shall include:

- i) All claims for civil penalties recoverable under PAGA relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims for civil penalties recoverable under PAGA related to the timeliness of wage payments (whether regular or final wages); all claims for civil penalties recoverable under PAGA relating to the failure to provide compliant meal, rest, and recovery periods; all claims for civil penalties recoverable under PAGA relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims for civil penalties recoverable under PAGA relating to the provision of wage statements; all claims for civil penalties recoverable under PAGA relating to the failure to maintain accurate employment records; and all claims for civil penalties recoverable under PAGA relating to the deduction of wages.
- ii) All claims for civil penalties under California Labor Code §§203, 210,

225.5, 226, 226.3, 248.5, 558, 1174.5, 1197.1, 8 C.C.R. §11030, Section 20; 8 C.C.R. §11080, Section 20; 8 C.C.R. §11130, Section 20; 11140, Section 18; and other default civil penalties for the Released PAGA Claims available under California Labor Code §2699.

5.5 Construction. The Parties intend that this release be construed as broadly as possible. The release excludes the release of claims not permitted by law.

5.6 Resolution of Good Faith Dispute. The Parties warrant and represent that the releases for Participating Class Members and Aggrieved Employees resolve, pursuant to Labor Code §§206 and 206.5, and applicable case law (including but not limited to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796) a good faith dispute regarding any and all wages, if any, owed by Defendants to Participating Class Members / Aggrieved Employees through their last day of employment with Defendants within the Class Period and PAGA Period.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiff shall prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”). Defendants shall not oppose the motion, to the extent consistent with this Agreement.

6.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code §2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming his willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel attesting to their competency to represent the Class Members; and (vii) proof of Plaintiff’s timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code §2699.3, subd. (a)), Operative Complaint (Labor Code §2699, subd. (l)(1)), and this Agreement (Labor Code §2699, subd. (l)(2))).

6.2 Responsibilities of Counsel. Not later than three business days before the Motion for Preliminary Approval is due to be filed, Class Counsel will provide Defense Counsel with drafts of all papers to be submitted in support of the motion. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns. However, no Party shall be obligated to consent to any material change (including but not limited to changes to the Gross Settlement Amount or the releases set forth herein) in the Agreement, whether or not such material change is caused or requested by the Court.

7. SETTLEMENT ADMINISTRATION

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, Phoenix Settlement Administrators agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expenses Payment. The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation

section 468B-1.

7.3 Notice to Class Members.

- 7.3.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Class Workweeks, and PAGA Pay Periods in the Class Data.
- 7.3.2 Using best efforts to perform as soon as possible, and in no event later than 21 calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as Exhibits A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Class Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.3.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.3.4 The deadlines for Class Members’ written objections, Challenges to Class Workweeks and/or PAGA Pay Periods (disputes), and Requests for Exclusion

will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

- 7.3.5 If the Administrator, Defendants, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person, by telephone, or via email, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Class Notice requiring them to exercise options under this Agreement within the timeframes applicable to Class Members whose Class Notice is re-mailed by the Administrator.

7.4 Requests for Exclusion (Opt-Outs).

- 7.4.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 7.4.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The

Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.4.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Release under Section 5.4.1 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice, an Individual Settlement Payment, objects to the settlement, or disputes the pay periods set forth in the Class Notice.

7.4.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Section 5.4.2 of this Agreement and are eligible for an Individual PAGA Payment.

7.4.5 All Aggrieved Employees are entitled to all benefits and bound by all terms and conditions of the Settlement as they pertain to PAGA claims, including the Aggrieved Employees' Release under Section 5.4.2 of this Agreement, regardless of whether the Aggrieved Employee actually receives the Class Notice, an Individual PAGA Payment, opts out of the class portion of the

Settlement, or disputes the pay periods set forth in the Class Notice. Aggrieved Employees may not exclude themselves from the PAGA portion of the Settlement and do not have standing to object to the Settlement.

7.5 Challenges to Calculation of Class Workweeks and PAGA Pay Periods. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Workweeks and PAGA Pay Periods contained in the Class Data are correct. The Administrator's determination of each Class Member's allocation of Class Workweeks and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Workweeks and/or PAGA Pay Periods and the Administrator's determination as to such challenges to Defense Counsel and Class Counsel, except that any information provided to Class Counsel in relation to pay period disputes shall not contain any personal identifying information (e.g., names and contact information) of the Class Members.

7.6 Objections to Settlement.

7.6.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment.

7.6.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. The written objection must: (i) indicate what the Class Member is objecting to; (ii) explain why the Class Member is

objecting; (iii) include any fact(s) that support the objection; and (iv) include the Class Member's full name, present address, and email address or telephone number.

7.6.3 In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. Any Participating Class Member wishing to present oral objections to the Settlement should notify Class Counsel and Defense Counsel of his/her intent to do so no later than three (3) calendar days before the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

7.6.4 Non-Participating Class Members and Aggrieved Employees have no right to object to any of the class action components of the Settlement.

7.6.5 If a Class Member submits both an objection and a Request for Exclusion, the Request for Exclusion shall be void and the Class Member shall be deemed a Participating Class Member.

7.7 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.7.1 Email Address, Fax Number, and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members, and also use an email address, fax number, and a toll-free telephone number to receive Class Member emails, faxes, and calls.

7.7.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing

(a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and, (c) copies of all Requests for Exclusion documentation submitted (whether valid or invalid). Upon request, the Administrator may provide summary information regarding the information described in this section to Class Counsel, but shall not provide any personal identifying information (e.g., names and contact information) to Class Counsel.

7.7.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Workweeks and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received, except that any information provided to Class Counsel shall not contain any personal identifying information (e.g., names and contact information) of the Class Members.

7.7.4 Class Workweek and/or PAGA Pay Period Challenges. The Administrator shall consult with Class Counsel and Defense Counsel in an attempt to resolve any such challenges; although the Administrator has the authority to address decisions consistent with the terms of this Agreement on all Class Member challenges regarding the calculation of Class Workweeks and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or

otherwise susceptible to challenge.

7.7.5 Administrator's Declaration. Not later than 21 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with its obligations under this Agreement, including, but not limited to, its mailing of the Class Notices, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), and the number of written objections received. The Administrator shall provide along with such declaration the Exclusion List with all personal identifying information (e.g., names and contact information) redacted. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.7.6 Final Report by Administrator. Within 10 days after the Administrator disburses the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements. All personal identifying information (e.g., names and contact information) shall be redacted from the report. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. If the number of workweeks during the Class Period exceeds 5,306 by more than ten (10) percent, meaning that the actual workweeks are more than 5,836, EvapTech shall have the

option of either: (1) increasing the amount of the Gross Settlement Amount proportionally for the excess increase in the total number of workweeks beyond the 5,836 (so that the Gross Settlement Amount will increase by 1% for every 1% increase in workweeks over the 10% threshold, the increase to be paid by EvapTech) or (2) modifying the applicable end date of the Class Period to a date prior to incurring the pro rata increase to keep the maximum workweeks at 5,836 (which is 10% more than 5,306) and not to trigger the escalator clause.

9. DEFENDANTS' RIGHT TO WITHDRAW. Each defendant shall have the right at its sole discretion to terminate the settlement as to itself if more than 5% of Class Members timely elect to exclude themselves from the Settlement, as determined by the Administrator. If either Defendant exercises its right under this Section, that Defendant shall be solely liable for administrative costs incurred by the Administrator, unless both Defendants exercise such right in which case those costs will be shared equally by them. A defendant must exercise its right to terminate the settlement in a writing to Class Counsel stating an intention to terminate the Settlement as to that defendant within 21-days of receiving the final Exclusion List from the Administrator. If one defendant terminates the settlement as to itself, the settlement shall remain intact as to the other defendant, for its pro rata share of the settlement.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code §2699, subd. (l), a proposed Final Approval order, and a proposed Judgment (collectively "Motion for Final Approval"), and a motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment. Plaintiff shall provide drafts of these documents to Defense Counsel not later than 3 business days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by

telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Agreement (including but not limited to the scope of the releases or changes to the Gross Settlement Amount), the Parties shall expeditiously work together in good faith to address the Court's concerns and endeavor to revise the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this section. No Party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court. If for any reason the Court does not grant final approval of the Settlement, this Agreement shall be automatically void and vacated.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or

appeals.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the appellate court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of releases or changes to the Gross Settlement Amount), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis between Plaintiff and Defendants, any additional administration expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment, the Class Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment shall not constitute a material modification of the Judgment within the meaning of this section, as long as the Gross Settlement Amount remains unchanged. However, no party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the reviewing Court.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure §384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted. Nor shall this Agreement be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, Defendants reserve all

available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality. Prior to preliminary approval, Plaintiff, Class Counsel, Defendants, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal government agency; or, (6) to Class Members for purposes of informing them about this Settlement and its procedures. After preliminary approval, Class Counsel shall not disclose this Settlement to current or former employees of Defendants, to the media, or on any websites, blogs, social media, and/or online platforms. Exceptions to Class Counsel's obligation of confidentiality after preliminary approval are (i) disclosures necessary to comply with the law, judicial processes, or for financial planning or tax preparation purposes; (ii) to the extent needed to obtain approval and/or enforce this Agreement; (iii) disclosures to a court for purposes of describing its qualifications as counsel; or, (iv) to Class Members for purposes of informing them about this Settlement and its procedures. Each Party agrees to immediately notify the other Party of any judicial or agency order, inquiry, or subpoena seeking such information.

12.3 No Solicitation. The Parties agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this section shall be construed to restrict the Parties' or their

respective counsel's ability to communicate with Class Members for purposes of informing them about this Settlement and its procedures.

12.4 Integrated Agreement. Upon execution by the Parties, Class Counsel, and Defense Counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5 Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, or not approved, such invalidity, illegality, unenforceability, or non-approval shall in no way affect any other provision if the Court and counsel, on behalf of the Parties and the Class Members, mutually elect in writing to proceed as if such invalid, illegal, unenforceable, or unapproved provision had never been included in this Agreement. If the Parties do not elect to proceed, the Parties shall be restored to their respective positions in the Action, as of the date of the hearing on the motion for preliminary approval.

12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of Mr. Tripper Ortman and/or the Court for resolution. Nothing in this section shall be construed as obligating the Parties to consent to any material change in the Agreement, whether or not such material change is caused or requested by the Court or the reviewing Court.

12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8 No Tax Advice. Plaintiff, Class Counsel, Defendants, and Defense Counsel are not

providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties, and approved by the Court.

12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

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

12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to California Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Effective Date, Plaintiff shall destroy all paper and electronic versions of Class Data received from Defendants unless, prior to the Effective Date, Defendants make a written request to Class Counsel for the return, rather than the destruction, of Class Data.

12.15 Headings. The descriptive heading of any section or section of this Agreement is {04121977; 4}

inserted for convenience of reference only.

12.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

12.17 Notice. All written notices, demands or other communications between the Parties in connection with this Agreement shall be addressed as follows:

To Plaintiff:

Scott M. Lidman
Milan Moore
Lidman Law, APC
2155 Campus Drive, Suite 150
El Segundo, California 90245
slidman@lidmanlaw.com, mmoore@lidmanlaw.com

To Defendants:

Ian B. Wieland, Esq.
David G. Litman, Esq.
Sagaser Watkins & Wieland PC
5260 N Palm Ave, Ste. 400
Fresno, CA 93704
Email: ian@sw2law.com, david@sw2law.com

Nicole R. Roysdon
Brian G. Lee
Wilson Turner Kosmo LLP
402 West Broadway, Suite 1600
San Diego, California 92101
Email: nroysdon@wilsonturnerkosmo.com, blee@wilsonturnerkosmo.com

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email, which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: June ²¹ , 2024

PLAINTIFF WILLIAM COLEMAN

William K. Coleman
William K. Coleman (Jun 21, 2024 16:24 CDT)

Dated: June , 2024

DEFENDANT PROENERGY CRAFTS, INC.

By: _____
Their: _____ and authorized representative

Dated: June 21, 2024

DEFENDANT EVAPTECH, INC.

Don Dobney
By: DON DOBNEY
Their: PRESIDENT and authorized representative

Approved as to Form

Dated: June 24, 2024

LIDMAN LAW, APC

By: Scott M
Attorneys for Plaintiff

Dated: June 25, 2024

SAGASER, WATKINS & WIELAND PC

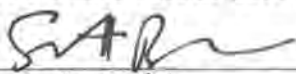
By: David G. Stum
Attorneys for Defendant EvapTech, Inc.

Dated: June __, 2024

PLAINTIFF WILLIAM COLEMAN

Dated: June 5, 2024

DEFENDANT PROENERGY CRAFTS, INC.


By: Scott Blair
Their: EC and authorized representative

Dated: June __, 2024

DEFENDANT EVAPTECH, INC.

By: _____
Their: _____ and authorized representative

Approved as to Form

Dated: June __, 2024

LIDMAN LAW, APC

By: _____
Attorneys for Plaintiff

Dated: June __, 2024

SAGASER, WATKINS & WIELAND PC

By: _____
Attorneys for Defendant EvapTech, Inc.

Dated: June 26, 2024

WILSON TURNER KOSMO LLP

By: 
Attorneys for Defendant ProEnergy Crafts, Inc.

EXHIBIT A

EXHIBIT A

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING
DATE FOR FINAL COURT APPROVAL**

William Coleman v. ProEnergy Crafts, Inc., et al., Lake County Superior Court
Case No. CV423136

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit ("Action") against Defendants ProEnergy Crafts, Inc. ("ProEnergy") and EvapTech, Inc. ("EvapTech") (ProEnergy and EvapTech are referred to collectively hereinafter as "Defendants") for alleged wage and hour violations. The Action was filed by a former non-exempt, hourly paid employee, William Coleman ("Plaintiff"), and seeks redress for alleged unpaid minimum wages, unpaid overtime wages, failure to provide meal and rest periods, failure to pay meal and rest period premiums, wage statement penalties, failure to timely pay wages, failure to pay wages upon termination, and restitution under California Business and Professions Code section 17200 for a class of individuals who worked for EvapTech through ProEnergy and/or American Professional Staffing Solutions, LLC ("APS Solutions") as non-exempt, hourly paid employees in California ("Class Members") during the period of time starting on September 16, 2018 and ending on [date of preliminary approval] ("Class Period"); and also seeks civil penalties under the California Private Attorneys General Act ("PAGA") for all individuals who worked for EvapTech through ProEnergy and/or APS Solutions as non-exempt, hourly paid employees in California ("Aggrieved Employees") during the period of time starting on September 16, 2021 and ending on [date of preliminary approval] ("PAGA Period").

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendants' records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ [redacted] (less tax withholding) and your Individual PAGA Payment is estimated to be \$ [redacted]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants' records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendants' records showing that **you worked [redacted] Class Workweeks** during the Class Period and **you worked [redacted] PAGA Pay Periods** during the PAGA Period. If you believe that you worked more or less workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether

to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for EvapTech through ProEnergy and/or APS Solutions during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Released Class Claims and Released PAGA Claims against Defendants as defined below in Section 3 of this Notice.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Class Claims and Released PAGA Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [REDACTED]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by 	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on . You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by 	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many weeks in which you received payment for wages for work performed in California within the week and how many pay periods in which you received payment for wages for work performed in California within the pay period during the PAGA Period, respectively. The number of Class Workweeks and number of PAGA Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is an individual who alleges he worked for Defendants in California as a non-exempt, hourly paid employee. The Action accuses Defendants of violating California labor laws by failing to pay overtime wages, failing to pay minimum wages, failing to provide meal periods and rest breaks, failing to pay meal and rest period premiums, failing to provide accurate itemized wage statements, failing to timely pay wages, and failing to pay all wages upon termination of employment. Based on the same claims, Plaintiff has also asserted a claim for restitution under California Business and Professions Code section 17200 and a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) (“PAGA”). Plaintiff is represented by attorneys in the Action: Scott M. Lidman and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws. ProEnergy also denies it employed Plaintiff or any of the Class Members or Aggrieved Employees.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims. Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

- a) Defendants Will Pay \$380,000.00 as the Gross Settlement Amount. Defendants promise to pay a total of Three Hundred Eighty Thousand Dollars and Zero Cents (\$380,000.00). Of this Gross Settlement Amount, EvapTech shall pay Two Hundred, Ninety Thousand Dollars and Zero Cents (\$290,000.00) and ProEnergy shall pay Ninety Thousand Dollars and Zero Cents (\$90,000.00). Defendants have agreed to deposit the Gross Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, the Administration Expenses Payment, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants’ share of payroll taxes on the Wage Portion of the Individual Class Payments, by transmitting the funds to the Administrator no later than thirty (30) days after the Effective Date. Effective Date means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- b) Court Approved Deductions from Gross Settlement Amount. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - i. Up to \$126,666.66 (1/3rd of the Gross Settlement Amount) to Class Counsel for

the Class Counsel Fees Payment and up to \$30,000.00 for the Class Counsel Litigation Expenses Payment. To date, Class Counsel have worked and incurred expenses on the Action without payment.

- ii. Up to \$7,500.00 to Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
- iii. Up to \$10,000.00 to the Administrator for services administering the Settlement.
- iv. Up to \$20,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- c) Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the "Net Settlement Amount") by making Individual Class Payments to Participating Class Members based on their Class Workweeks. The calculation is explained more fully below in Section 4.
- d) Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% to interest and penalties ("Non-Wage Portion"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes owed on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- e) Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the money represented by your check is sent to the State Controller's Unclaimed Property Fund, you should

consult the rules of the Fund for instructions on how to retrieve your money.

- f) Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. To opt-out, you must send the Administrator a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendants.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendants based on the PAGA Period facts alleged in the Action.

Each Defendant shall have the right at its sole discretion to terminate the settlement as to itself if more than 5% of Class Members timely elect to exclude themselves from the Settlement, as determined by the Administrator. If either Defendant exercises its right under this Section, that Defendant shall be solely liable for administrative costs incurred by the Administrator, unless both Defendants exercise such right in which case those costs will be shared equally by them. A defendant must exercise its right to terminate the settlement in a writing to Class Counsel stating an intention to terminate the Settlement as to that defendant within 21-days of receiving the final Exclusion List from the Administrator. If one defendant terminates the settlement as to itself, the settlement shall remain intact as to the other defendant, for its pro rata share of the settlement. If both Defendants exercise this right, the Settlement shall become null and void.

- g) The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants that have not already been released by a prior release agreement, if applicable.
- h) Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member challenges over Class Workweeks and PAGA Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
- i) Participating Class Members' Release. After the Judgment is final, Participating

Class Members will be legally barred from asserting any of the claims released under the Settlement, although the releases may be invalidated against any Defendant who fails to fund their share of the Gross Settlement Amount and their share of the employer's payroll taxes. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and claims, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns and estates, shall release Defendants together with their present and former parents, subsidiaries, affiliated and related entities, commonly owned or controlled entities, present and former owners, board members, officers, directors, trustees, shareholders, members, partners, employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for claims released by Plaintiff, or the Released Class Claims and Released PAGA Claims, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other vicarious liability theory including American Professional Staffing Solutions, LLC ("Released Parties") from all claims, rights, demands, liabilities, and causes of action that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint, and which arose or existed during the Class Period, including claims for violation of the California Labor Code or any other State or Federal law, including any statute, regulation, or ordinance imposing liability and/or obligations that could be brought based on the allegations in the Operative Complaint ("Released Class Claims"). Without limiting the foregoing, Released Class Claims shall include:

- (i) All claims relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims related to the timeliness of wage payments (whether regular or final wages); all claims relating to the failure to provide compliant meal, rest, and recovery periods; all claims relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims relating to the provision of wage statements; all claims relating to the failure to maintain accurate employment records; all claims relating to the deduction of wages; and all claims relating to unfair business practices resulting from any of the foregoing.
- (ii) All claims arising under California Labor Code §§201, 202, 203, 204, 208, 210, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7,

510, 512, 551, 552, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2699; 8 C.C.R. §11010, Sections 3, 4, 7, 11, 12, and 20; 8 C.C.R. §11030, Sections 3, 4, 7, 11, 12, and 20; 8 C.C.R. §11080, Sections 3, 4, 7, 11, 12, and 20; 8 C.C.R. §11130, Sections 3, 4, 7, 11, 12, and 20; 11140, Sections 3, 4, 7, 11, 12, 18; 8 C.C.R. §3395; California Business and Professions Code §§17200-17208; California Civil Code §§3287, 3288, and 3289; California Code of Civil Procedure §1021.5; and related claims under the applicable provisions of the Fair Labor Standards Act (29 U.S.C. §§201, *et seq.*).

- (iii) All remedies associated with any of the claims described herein, including but not limited to compensatory, consequential, incidental, liquidated, and punitive damages; penalties (whether statutory or civil); restitution; interest; costs; attorneys' fees; injunctive or other equitable relief.
 - (iv) Notwithstanding the above, the Released Class Claims do not release any claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.
- j) Aggrieved Employees' PAGA Release. After the Court's judgment is final, all Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns and estates, shall release Defendants and Released Parties of all claims that are assertable under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint or Plaintiff's PAGA Notices, and which arose or existed during the PAGA Period ("Released PAGA Claims"). This means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.
- Without limiting the foregoing, Released PAGA Claims shall include:

- (i) All claims for civil penalties recoverable under PAGA relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims for civil penalties recoverable under PAGA related to the timeliness of wage payments (whether regular or final wages); all claims for civil penalties recoverable under PAGA relating to the failure to provide compliant meal, rest, and recovery periods; all claims for civil penalties recoverable under PAGA relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims for civil penalties recoverable under PAGA relating to the provision of wage statements; all claims for civil penalties recoverable under PAGA relating to the failure to maintain accurate employment records; and all

claims for civil penalties recoverable under PAGA relating to the deduction of wages.

- (ii) All claims for civil penalties under California Labor Code §§203, 210, 225.5, 226, 226.3, 248.5, 558, 1174.5, 1197.1, 8 C.C.R. §11030, Section 20; 8 C.C.R. §11080, Section 20; 8 C.C.R. §11130, Section 20; 11140, Section 18; and other default civil penalties for the Released PAGA Claims available under California Labor Code §2699.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

- a) Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Class Workweeks worked by each individual Participating Class Member.
- b) Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$5,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
- c) Class Workweek/PAGA Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [REDACTED] to challenge the number of Class Workweeks and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Class Workweeks and/or PAGA Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Class Workweek and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

- a) Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment, if applicable.

- b) Aggrieved Employees. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee even if the Aggrieved Employee opts out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as "William Coleman v. ProEnergy Crafts, et al.", and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [redacted], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 Court days before the [redacted] Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Class Representative Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

[redacted] (url) or the Court's website [redacted] (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Class Representative Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is [redacted].** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as William Coleman v. ProEnergy Crafts, et al. and include your name, current address, telephone number, and approximate dates of employment and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You should notify Class Counsel and Defendants' counsel of your intent to present a verbal objection no later than three calendar days before the Final Approval Hearing. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on [REDACTED] (date) at [REDACTED] (time) in Department 1 of the Lake County Superior Court, located at 255 North Forbes Street, Lakeport, California 95453. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement Amount will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) personally. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website [REDACTED] beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

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