

1 EDWIN AIWAZIAN, Bar No. 232943
ARBY AIWAZIAN, Bar No. 269827
2 JOANNA GHOSH, Bar No. 272479
LAWYERS *for* JUSTICE, PC
3 410 West Arden Avenue, Suite 203
Glendale, California 91203
4 Telephone: (818) 265-1020
Facsimile: (818) 265-1021

5 Attorneys for Plaintiff
6 MICHAEL STAYTON

7 ROBERT G. HULTENG, Bar No. 071293
8 JOSHUA D. KIENITZ, Bar No. 244903
LISA K. HORGAN, Bar No. 267632
9 LITTLER MENDELSON, P.C.
333 Bush Street, 34th Floor
10 San Francisco, CA 94104
Telephone: 415.433.1940
11 Facsimile: 415.399.8490

12 Attorneys for Defendant
13 MESA ENERGY SYSTEMS, INC.

14
15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF ALAMEDA

17 MICHAEL STAYTON, individually, and
18 on behalf of other members of the general
public similarly situated,

19 Plaintiff,

20 v.

21 MESA ENERGY SYSTEMS, INC., a
22 California corporation; and DOES 1
through 100, inclusive,

23 Defendants.

Case No. RG15762333

Assigned For All Purposes To
Honorable Winifred Smith, Dept. 21

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

Complaint Filed: March 13, 2015
Trial Date: none set

1 **I. INTRODUCTION**

2 1. This Joint Stipulation of Class Action Settlement and Release (hereinafter
3 “Settlement Agreement,” “Settlement,” or “Agreement”) is made and entered into by and between
4 the following Parties: Plaintiff Michael Stayton (“Plaintiff”), individually and on behalf of all others
5 similarly situated, Defendant Mesa Energy Systems, Inc., a California Corporation (“Defendant” or
6 “Mesa”), and their respective counsel of record. This Settlement Agreement is subject to the terms
7 and conditions set forth below and to the approval of the Court. Once mutually executed, this
8 Settlement Agreement supersedes the February 5, 2016, Memorandum of Understanding (“MOU”)
9 by which the Parties reached an agreement to resolve this case. This Agreement accurately sets forth
10 the Parties’ class action settlement to resolve the Action.

11 2. It is hereby stipulated and agreed, by and between the undersigned Parties, subject to
12 approval of the Court, that the settlement of this action shall be effectuated upon and subject to the
13 following terms and conditions.

14 **II. DEFINITIONS**

15 3. The following capitalized terms, when used in this Agreement, shall have the
16 following meanings:

17 A. The “Action” means the lawsuit captioned above.

18 B. “Claim Amount” means the total, gross amount due to a Qualified Claimant,
19 which shall be calculated pursuant to the terms of this Agreement.

20 C. “Claim Form” means the document attached hereto as Exhibit 2.

21 D. “Claims Period” means a period of Forty-Five (45) calendar days from the
22 date the Settlement Administrator mails the Settlement Documents to Class Members. If the 45th
23 day falls on a Sunday or holiday, the Claims Period shall end on the next business day that is not a
24 Sunday or holiday.

25 E. “Class” mean all current and former hourly/non-exempt employees of
26 Defendant who worked in the State of California within the Class Period.

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1 F. "Class Counsel" means the attorneys for Named Plaintiff and Class Members,
2 which are: Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh, Lawyers for Justice, PC, 410 West
3 Arden Avenue, Suite 203, Glendale, California 91203, Telephone: (818) 265-1020, Facsimile: (818)
4 265-1021.

5 G. "Class Member" means each person eligible to participate in this Settlement
6 who is a member of the Class defined above.

7 H. "Class Member Allocation" is the portion of the Maximum Settlement
8 Amount eligible for distribution to Qualified Claimants. The Class Member Allocation is the
9 amount remaining after the deduction from the Maximum Settlement Amount, authorized by this
10 Agreement, of the maximum amount of Class Counsel's attorneys' fees, Class Counsel's litigation
11 costs and expenses, Service Enhancement Payment, Settlement Administration Costs, and payment
12 to the LWDA pursuant to PAGA. The Class Member Allocation is estimated to be Four Hundred
13 Thirty-Two Thousand Two Hundred Fifty U.S. Dollars (\$432,250).

14 I. "Class Period" means March 13, 2011, through April 5, 2016.

15 J. "Class Representative" or "Plaintiff" means Plaintiff Michael Stayton.

16 K. "Court" means the Superior Court of California, County of Alameda.

17 L. "Complaint" shall mean the operative Complaint in the above-entitled Action.

18 M. "Date of Preliminary Approval" means the date the Court enters an Order
19 approving this Agreement, and the exhibits thereto, and setting a hearing for Final Approval of the
20 Settlement, including approval of attorneys' fees and costs.

21 N. "Defendant" shall mean Mesa Energy Systems, Inc.

22 O. "Defense Counsel" means the attorneys for Defendant, which are: Robert G.
23 Hulteng, Joshua D. Kienitz, and Lisa K. Horgan, LITTLER MENDELSON, P.C., 333 Bush Street,
24 34th Floor, San Francisco, California 94104, Telephone: 415.433.1940, Facsimile: 415.399.8490.

25 P. "Deficient Claim Form" means a Claim Form that is not signed by the Class
26 Member submitting the Claim Form or cannot be verified by the Settlement Administrator as being
27 an authentic and complete submission by the Class Member.

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1 Q. "Deficient Claimant" means a Class Member that has submitted a Deficient
2 Claim Form and has failed timely to cure its deficiencies.

3 R. "Late Claim Form" means a Claim Form that is submitted to the Settlement
4 Administrator after the end of the Claims Period.

5 S. "Late Claimant" means a Class Member that has submitted a Late Claim
6 Form.

7 T. "LWDA" means the California Labor and Workforce Development Agency.

8 U. "Maximum Settlement Amount" is the sum of Seven Hundred Twenty-Five
9 Thousand U.S. Dollars (\$725,000), which represents the maximum amount payable in this
10 settlement by Defendant, which includes all attorneys' fees, and litigation costs and expenses,
11 Settlement Administration Costs, payment to the LWDA, interest, all payments to Class Members,
12 and employee's and employer's share of taxes and withholdings obligations arising from the wage-
13 portion of settlement payments, and the Service Enhancement Payment to the Class Representative.

14 V. "Minimum Payment" shall be an amount equal to fifty percent (50%) of the
15 Class Member Allocation, which will be distributed to Qualified Claimants subject to the provisions
16 stated herein.

17 W. "Notice of Class Action Settlement" shall mean the document attached hereto
18 as **Exhibit 1**.

19 X. "PAGA" means the California Labor Code Private Attorneys General Act of
20 2004 (as amended), California Labor Code §§ 2698 *et seq.*

21 Y. "Parties" collectively refers to Plaintiff and Defendant herein.

22 Z. "Qualified Claimant" means a Class Member who has timely submitted a
23 correctly completed Claim Form to the Settlement Administrator, signed under penalty of perjury,
24 and who has not opted-out of the Settlement.

25 AA. "Qualifying Work Weeks" means the number of weeks or partial weeks
26 during the Class Period during which a Class Member was employed as an hourly/non-exempt
27 employee by Defendant in California. Qualifying Work Weeks will be calculated by the Settlement
28 Administrator based on information regarding the Class Member's length of employment within the

1 relevant time period provided by Defendant.

2 BB. "Settlement Administrator" means Simpluris, Inc., whom the parties have
3 selected to administer this Settlement.

4 CC. "Settlement Administration Costs" mean the fees and expenses reasonably
5 and necessarily incurred by the Settlement Administrator as a result of performing the settlement
6 administration procedures and functions expressly required in this Agreement and shall include all
7 costs of administering the Settlement, including but not limited, to all tax document preparation,
8 custodial fees, and accounting fees incurred by the Settlement Administrator; all costs and fees
9 associated with preparing, issuing and mailing any and all notices and other correspondence to Class
10 Members; all costs and fees associated with computing, processing, reviewing, and paying the
11 Individual Settlement Payments, and resolving disputed claims; all costs and fees associated with
12 calculating tax withholdings and payroll taxes and making related payment to federal state tax
13 authorities and issuing tax forms relating to payments made under the Settlement; all fees and costs
14 associated with any other payments to be made out of or into the Settlement Fund; all costs and fees
15 associated with preparing any tax returns and any other filings required by any governmental taxing
16 authority or agency; all costs and fees associated with preparing any other notices, reports, or filings
17 to be prepared in the course of administering disbursements from the Settlement Fund; and any other
18 costs and fees incurred and/or charged by the Settlement Administrator in connection with the
19 execution of its duties under this Agreement.

20 DD. "Settlement Class" and "Settlement Class Members" means all Class
21 Members who do not validly and timely opt out of the settlement.

22 EE. "Settlement Documents" shall mean the Notice of Class Action Settlement
23 (**Exhibit 1**) and the Claim Form (**Exhibit 2**) attached hereto.

24 FF. "Effective Date" means the date of (i) the Court's order granting Final
25 Approval of the Settlement, if there are no objections to the settlement; (ii) if there are objections,
26 then upon the expiration of time for appeal of the Court's Final Approval order; or (iii) if there is an
27 appeal by an objector, then upon the final resolution of any appeal from the Court's Final Approval
28 order.

1 GG. "Settlement Fund" shall mean the Qualified Settlement Fund established by
2 the Settlement Administrator for the benefit of the Class Members, from which payments will be
3 made in accordance with this Agreement.

4 HH. "Settlement Agreement," "Settlement" and "Agreement" each shall mean this
5 Joint Stipulation of Class Action Settlement and Release.

6 II. "Settlement Share" shall mean the *pro rata* share of the Class Member
7 Allocation that each Class Member is eligible to receive on a claims-made basis pursuant to this
8 Agreement, calculated in the manner set forth in Section V.12.E.2.

9 JJ. "Individual Settlement Payment" shall mean the Settlement Share, after
10 reduction for employer's and employee's share of taxes and withholding with respect to the wage-
11 portion of the share, which will be paid to each Qualified Claimant.

12 III. LITIGATION BACKGROUND

13 4. On March 13, 2015, Plaintiff Stayton filed a Class Action Complaint for Damages
14 alleging claims for (1) overtime wages (California Lab. Code Section 510); (2) meal break premiums
15 (Lab. Code Sections 226.7, 512); (3) rest break premiums (Lab. Code Section 226.7); (4) minimum
16 wages (Lab. Code Sections 1194, 1197, and 1197.1); (5) timely final wages / waiting time penalties
17 (Lab. Code Sections 201-203); (6) timely wage payment during employment (Lab. Code Section
18 204); (7) itemized wage statements (Lab. Code Section 226); (8) recordkeeping requirements (Lab.
19 Code Section 1174(d)); (9) business expense reimbursement (Lab. Code Section 2802); and related
20 claims under the (10) California Unfair Competition Law (California Business and Professions Code
21 Section 17200). Plaintiff sought to represent a putative class of "All current and former hourly-paid
22 or non-exempt employees who worked for any of the Defendants within the State of California at
23 any time." Plaintiff sought class-wide relief for, *inter alia*, unpaid overtime wages, an additional
24 hour of pay for Defendant's alleged failure to provide legally compliant meal breaks, an additional
25 hour of pay for Defendant's alleged failure to provide legally compliant rest breaks, actual damages,
26 attorney's fees and costs, interest, injunctive relief, liquidated damages pursuant to California Labor
27 Code section 1194.2, California Labor Code section 203 waiting time penalties for former
28 employees, penalties under Labor Code section 203, 226, 1174.5, and 1197.1, and restitution under

1 the California Unfair Competition Law.

2 5. In its Answer to the Class Action Complaint, Defendant denied and continues to deny
3 Plaintiff's claims. Defendant does not believe that any liability to Plaintiff or Class Members exists,
4 or that Plaintiff or Class Members are entitled to any recovery. In addition, Defendant contends that
5 Plaintiff's claims are not suitable for class or representative action treatment. In settling this Action,
6 Defendant does not admit liability with respect to any of the alleged claims made by Plaintiff and
7 makes no admissions regarding any facts or law related to the Action. Nothing in this agreement
8 will be offered or used for the purpose of arguing or asserting this settlement is an admission of
9 liability by Defendant.

10 6. The parties exchanged substantial informal discovery, including copies of relevant
11 employee handbooks and policies, and data and documents related to the size of the proposed class
12 and the damages alleged against Defendant. Based on the informal discovery exchanged, Plaintiff
13 and his counsel prepared a detailed analysis of alleged damages.

14 7. On October 13, 2015, the Parties participated in a full-day mediation with respected
15 class action mediator Michael E. Dickstein, Esq. in San Francisco, California. No agreement was
16 reached at the mediation to resolve the matter. However, during the months following the
17 mediation, Mr. Dickstein continued working with the Parties until a settlement was finally reached in
18 the MOU of February 5, 2016. All of the terms of the Parties' settlement are contained within this
19 Agreement. At all times, the Parties' settlement negotiations have been non-collusive, adversarial,
20 and at arm's length.

21 8. Discussions between counsel for the Parties, informal discovery, as well as the
22 investigation and evaluation of the Plaintiff's claims by the Parties, have permitted each side to
23 assess the relative merits of the claims and the defenses to those claims. The above-described
24 investigation and evaluation, as well as the information exchanged during settlement negotiations
25 and mediation, are more than sufficient to assess the merits of the respective Parties' positions and to
26 compromise the issues on a fair and equitable basis. Based on their own independent investigations
27 and evaluations, Class Counsel is of the opinion that the consideration and terms of the Settlement as
28 set forth below, considering the representative and class claims, and the risk of loss, is fair,

1 reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of
2 the Class. Class Counsel is also of the opinion that the total consideration and payment set forth in
3 this Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, and
4 the possible defenses, and offset claims that Defendant has asserted and could assert. Specifically,
5 Defendant's position is that, based on the collective bargaining agreement that covered Plaintiff's
6 employment, Plaintiff's overtime claims, meal break claims, and rest break claims fail as a matter of
7 law, under Labor Code Section 514, Labor Code Section 512(e)-(g), and Section 11 of Wage Order
8 16-2001, respectively.

9 9. Class Counsel recognizes the substantial monetary benefit to the Class and the
10 expenses and length of continued proceedings necessary to prosecute the Action against the
11 Defendant through class certification, trial, and possible appeals. Class Counsel has also taken into
12 account the uncertain outcome and risk of any litigation, especially in complex actions such as class
13 and representative actions, as well as the difficulties and delay inherent in such litigation. Therefore,
14 Class Counsel has determined that the settlement set forth in this Stipulation of Settlement is in the
15 best interest of the Class.

16 10. Defendant and its counsel have similarly concluded that it is desirable that the Action
17 be settled in a manner and upon such terms and conditions set forth herein in order to avoid further
18 expense, inconvenience and distraction of further legal proceedings, and the risk of the outcome of
19 the Action. Therefore, Defendant has determined that it is desirable and beneficial to finally and
20 fully put to rest the claims in the Action.

21 **IV. JURISDICTION AND VENUE**

22 11. The Court has jurisdiction over the Parties and the subject matter of this action. The
23 Court will have continuing jurisdiction over the terms and conditions of this Agreement, until all
24 payments and obligations provided for herein have been fully executed.

25 **V. TERMS OF SETTLEMENT**

26 12. In consideration of the mutual covenants, promises, and undertakings set forth herein,
27 the Parties agree, subject to the Court's approval, as follows:

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1 A. Non-Admission. Nothing in this Agreement shall be construed to be or
2 deemed an admission by Defendant of any liability, culpability, negligence, or wrongdoing toward
3 the Class Representative, the Class Members, or any other person, and Defendant specifically
4 disclaims any liability, culpability, negligence, or wrongdoing toward the Class Representative, the
5 Class Members, or any other person, and further denies that class certification or representative
6 action treatment is appropriate. Each of the Parties has entered into this Agreement with the
7 intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and
8 contingencies. This Agreement, and any related court documents or orders, may not be cited or
9 otherwise admitted as evidence of liability or that class certification or representative action
10 treatment is appropriate. There has been no final determination by any Court as to the merits of the
11 claims asserted by Plaintiff against Defendant or as to whether a class should be certified, other than
12 for settlement purposes only.

13 B. Conditional Certification of the Settlement Class. The Parties stipulate to the
14 conditional certification of the Settlement Class as defined herein for settlement purposes only,
15 pursuant to California Rule of Court 3.769(d) and Code of Civil Procedure section 382. As set forth
16 in the provisions below, the certification for settlement purposes is void and all terms of this
17 Settlement are void if this Settlement is not approved by the Court. The Parties further stipulate that,
18 for settlement purposes only, the law firm of Lawyers *for* Justice, PC, may be appointed as Class
19 Counsel, and that Plaintiff Michael Stayton may be appointed the Class Representative. Defendant's
20 stipulation to this Settlement Class shall not be construed as an admission or acknowledgement of
21 wrongdoing of any kind or that any class should be certified or given collective action treatment.

22 C. Settlement Class Period. The settlement and release for the Settlement Class
23 covers the period from March 13, 2011 through April 5, 2016.

24 D. Non-Approval By The Court. In the event that this Agreement is not
25 approved by the Court, fails to become effective, or is reversed, withdrawn or materially modified by
26 the Court or an appeal:

- 27 1. The Agreement shall have no force or effect;

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1 2. The Agreement shall not be admissible in any judicial, administrative,
2 or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

3 3. None of the parties to this Agreement will be deemed to have waived
4 any claims, objections, defenses, or arguments with respect to the issue of class certification or the
5 merits of Plaintiff's claims.

6 E. Settlement Payments.

7 1. Defendant shall pay an amount not to exceed Seven Hundred Twenty-
8 Five Thousand U.S. Dollars (\$725,000) as the Maximum Settlement Amount to resolve the Action
9 on a class-wide basis. \$725,000 is the total maximum and all-inclusive amount Defendant may pay
10 under the Settlement embodied by this Agreement, and under no circumstances will Defendant be
11 obligated to pay any more than the Maximum Settlement Amount of \$725,000, except as provided in
12 Sections V.12.E.1(c) and VI.14. The Parties agree to the following allocations to be paid from the
13 Maximum Settlement Amount, subject to Court approval:

14 (a) Attorneys' Fees and Costs. From the Maximum Settlement
15 Amount, Defendant will not oppose or object to Plaintiff's counsel's application to the Court for up
16 to Thirty-Five Percent (35%) of the Maximum Settlement Amount for attorneys' fees. Plaintiff's
17 attorneys' fees to be requested from the Court are Two Hundred Fifty-Three Thousand Seven
18 Hundred Fifty U.S. Dollars (\$253,750), which request will be subject to the approval of the Court.
19 Defendant will further not oppose or object to Plaintiff's counsel's application for up to Ten
20 Thousand U.S. Dollars (\$10,000) in costs and expenses, which request will be subject to the
21 approval of the Court. Plaintiff's application for attorneys' fees and costs shall be heard by the
22 Court at the Final Fairness and Approval Hearing. If the Court awards a lesser sum for Plaintiff's
23 attorneys' fees and/or costs and expenses, the residual amount shall not be part of the settlement and
24 shall not be paid by Defendant. The attorneys' fees and costs for Class Counsel approved by the
25 Court shall encompass all work performed, and costs and expenses, related to the investigation,
26 prosecution, and settlement of the Action incurred through dismissal of the Action with prejudice.
27 Payment of the amounts set forth herein shall affect a full and final release, in favor of Defendant, of
28 any and all claims of Class Counsel for attorneys' fees and expenses arising from the Action,

1 whether known and unknown, whether under federal, state and/or local law, statute, ordinance,
2 regulation, common law, or other source of law. including, but not limited to, claims for attorneys'
3 fees and expenses arising from or dependent on the California Civil Code; the California Labor
4 Code; the wage orders of the California Industrial Welfare Commission; California Business and
5 Professions Code section 17200 et seq.; California Labor Code Section 2698 et seq. (PAGA); and
6 the California common law of contract and tort.

7 (b) Service Enhancement Payment. From the Maximum
8 Settlement Amount, Defendant will not oppose an application to the Court for a Service
9 Enhancement Payment to the Plaintiff in the gross amount of Ten Thousand U.S. Dollars (\$10,000).
10 This amount will be reported on a form 1099-MISC and Plaintiff shall be solely responsible for any
11 tax obligations with respect to this payment. The amount of the Service Enhancement Payment will
12 be subject to the approval of the Court. If the Court awards a lesser sum for the Service
13 Enhancement Payment to Plaintiff, the residual amount shall not be part of the settlement and shall
14 not be paid by Defendant.

15 (c) Administration Fees. From the Maximum Settlement Amount,
16 settlement administration fees paid to Simpluris, Inc. shall be up to Fifteen Thousand U.S. Dollars
17 (\$15,000) and will be subject to the approval of the Court. Any excess settlement administration
18 fees shall be paid by Defendant.

19 (d) PAGA Allocation. From the Maximum Settlement Amount,
20 the portion to be allocated for settlement of any and all claims for penalties under the PAGA is Four
21 Thousand U.S. Dollars (\$4,000) (75% of which shall be paid to the Labor Workforce Development
22 Agency ("LWDA") and 25% of which shall be paid to the Settlement Class members as part of the
23 Class Member Allocation).

24 (e) Class Member Allocation. The Class Member Allocation shall
25 be Four Hundred Thirty-Two Thousand Two Hundred Fifty U.S. Dollars (\$432,250), which
26 constitutes the amount remaining after deduction from the Maximum Settlement Amount of the
27 maximum amount of Class Counsel's attorneys' fees, Class Counsel's litigation costs and expenses,
28 Service Enhancement Payment, Administration Costs, and payment to the LWDA pursuant to

1 PAGA, as authorized by this Agreement and subject to approval by the Court.

2 (f) The Parties agree that the Agreement shall remain binding even
3 if the Court does not approve the full amount of attorneys' fees, litigation costs, Service
4 Enhancement Payment, PAGA payments, and/or Administration Costs. The Agreement shall remain
5 binding with any such Court-ordered modification(s) and its terms will otherwise remain unchanged.

6 2. Calculation of Settlement Amounts.

7 (a) Pro Rata Payment. Each Class Member will be eligible to
8 receive a *pro rata* share of the Class Member Allocation on a claims-made basis based on each Class
9 Member's Qualifying Work Weeks as reflected in Defendant's records ("Settlement Share") as set
10 forth herein. The share shall be calculated in the following manner:

11 (i) The number of Qualifying Work Weeks that each Class
12 Member was employed shall be determined;

13 (ii) The number of Qualifying Work Weeks that all Class
14 Members were employed shall be aggregated;

15 (iii) The percentage obtained by dividing the number of
16 Qualifying Work Weeks for an individual Class Member by the aggregate of all Qualifying Work
17 Weeks for all Class Members shall be used to calculate that individual Class Member's relative
18 share of the Class Member Allocation.

19 (b) The Parties hereby agree that the formula for allocating the
20 Settlement Shares to Class Members provided herein is reasonable and that the Settlement Shares
21 provided herein are designed to provide a fair settlement to the Class, despite the uncertainties
22 associated with the amounts alleged to be owed.

23 (c) Minimum Payment to Qualified Claimants.

24 (i) The Settlement Administrator shall calculate the
25 Settlement Share for each Qualified Claimant based on the formula specified immediately above, on
26 a claims-made basis. If the total of all Settlement Shares for all Qualified Claimants is less than Two
27 Hundred Sixteen Thousand One Hundred Twenty-Five U.S. Dollars (\$216,125) (50% of the Class
28 Member Allocation), then the Settlement Shares shall each be augmented by a factor sufficient to

1 guarantee that the sum of all Settlement Shares equals \$216,125 (“Minimum Floor Augmentation
2 Factor”).

3 (ii) The Settlement has a 50% “floor,” which means that, in
4 the event that less than 50% of the maximum value of the Class Member Allocation is claimed by
5 Qualified Claimants, Defendant shall pay 50% of the Class Member Allocation to the Qualified
6 Claimants on a *pro rata* basis (resulting from the application of the Minimum Floor Augmentation
7 Factor). Any difference between the actual amount of the Settlement Shares (no less than \$216,125)
8 and the Class Member Allocation (\$432,250) shall be retained by Defendant. If the amount claimed
9 by Qualified Claimants equals more than 50% of the Class Member Allocation (the “Minimum
10 Payment”), Defendant will not be required to pay any unclaimed amounts above the Minimum
11 Payment.

12 (d) Tax Treatment. For tax purposes, all Settlement Shares to
13 Qualified Claimants from the Class Member Allocation shall be treated as 1/3 wages (subject to
14 appropriate employer’s and employee’s share of taxes and withholdings), 1/3 penalties, and 1/3
15 interest (for which appropriate IRS Form 1099’s will be issued). The Parties further understand that
16 the Class Representative and any Class Member who receives any Settlement Payment pursuant to
17 this Agreement shall be solely responsible for any and all tax obligations associated with such
18 receipt, except as otherwise expressly set forth in this Agreement. The Class Representative and
19 Class Members should consult with their tax advisors concerning the tax consequences of the
20 payments they receive under the Settlement.

21 **VI. CLAIMS ADMINISTRATION AND SETTLEMENT PAYMENT PROCEDURES**

22 13. The Parties have chosen Simpluris, Inc. to administer this Settlement and to act as the
23 Settlement Administrator, including but not limited to distributing and responding to inquiries about
24 the Notice of Proposed Class Action Settlement and the Claim Form, determining the validity of
25 Claim Forms and opt-outs, and calculating and distributing the Individual Settlement Payments to
26 Qualified Claimants. The Settlement Administrator shall expressly agree to all of the terms and
27 conditions of this Agreement. In the event the Court does not approve the appointment of Simpluris,
28 the parties will meet and confer to select an alternate Settlement Administrator.

1 14. As set forth in Section V(12)(E)(1)(c), settlement administration fees paid to
2 Simpluris, Inc. of up to Fifteen Thousand U.S. Dollars (\$15,000) shall come out of the Maximum
3 Settlement Amount. Any excess settlement administration fees shall be paid by Defendant.

4 15. The Settlement Administrator shall be responsible for: (a) preparing and mailing
5 Settlement Documents and reminder postcards to Class Members, including taking appropriate steps
6 (as described below) to trace and locate any individual Class Members whose address or contact
7 information as provided to the Settlement Administrator is inaccurate or outdated; (b) receiving and
8 independently reviewing and resolving any challenges, and associated documentation, from Class
9 Members regarding their number of Qualifying Work Weeks; (c) receiving and serving on Class
10 Counsel and Defendant's Counsel, and the Court, any opt out statements, copies of written
11 objections, and any rescission statements; (d) establishing a toll free telephone line and responding
12 to inquiries and requests for information or assistance from Class Members; (e) maintaining the
13 Settlement Fund account in an interest-bearing account; (f) determining and paying the final
14 amounts due to be paid to Qualified Claimants after adjustments taking into account the claims made
15 and the minimum payment provision; (g) determining the validity of any late disputes or claims by
16 previously unidentified Class Members, (h) reporting to Class Counsel, Defendant's Counsel, and
17 the Court regarding the completion of the tasks identified in this paragraph; and (i) carrying out other
18 related tasks including the proper maintenance of undisbursed Settlement Fund amounts in an
19 interest bearing account and reporting required for that account, in accordance with the terms of this
20 Agreement. All disputes relating to the Settlement Administrator's ability and need to perform its
21 duties shall be referred to the Court, if necessary, until all payments and obligations contemplated by
22 the Agreement have been fully executed.

23 16. Class Data. Defendant will provide the names, employee ID number, last known
24 address and telephone information, Social Security Numbers, and total individual Qualifying Work
25 Weeks for each member of the Class ("Class Data") to the Settlement Administrator only.
26 Defendant will provide the Class Data to the Settlement Administrator no later than fourteen (14)
27 calendar days after the Date of Preliminary Approval. Class Data shall be used by the Settlement
28 Administrator solely for the purpose of calculating settlement shares, notifying the Class Members

1 of the Settlement, and tax reporting. The Class Data shall not be disclosed to Class Counsel, the
2 Plaintiff, or any other Class Members without the written consent of Defendant. The Settlement
3 Administrator shall run the Class Data list through the National Change of Address database, and
4 will use the most recent address for each Class Member — either from Defendant’s records or the
5 National Change of Address database — when mailing the Settlement Documents. Class Data shall
6 be provided in a format to be mutually agreed upon by the Settlement Administrator and Defendant.

7 17. Class Information Confidential. The Class Data and Class Members’ estimated and
8 actual Settlement Shares and Individual Settlement Payments shall be kept strictly confidential by
9 the Settlement Administrator, who will not release such information to Class Counsel and will
10 provide such information to the Court only under seal and only if so ordered by the Court. Class
11 Counsel agrees that any information or documents they receive or have received in connection with
12 this Settlement may be used for this Action only, and may not be used for any purpose or in any
13 other action or proceeding.

14 18. Undeliverable Notices. Notices returned to the Settlement Administrator as non-
15 delivered shall be resent to the forwarding address, if any, on the returned envelope. With respect to
16 those Class Members whose Notice is returned to the Settlement Administrator as undeliverable with
17 no forwarding address on the envelope, the Settlement Administrator shall promptly attempt to
18 obtain a valid mailing address by performing a skip trace search and, if another address is identified,
19 shall mail the Notice to the newly identified address. A returned Notice will be forwarded at most
20 only once per Class Member by the Settlement Administrator. Upon completion of these steps by
21 the Settlement Administrator, Defendant shall be deemed to have satisfied its obligation to provide
22 the Notice of Class Action Settlement to the affected member of the Class.

23 19. Class Notice. Within ten (10) calendar days of receiving the Class Data list, the
24 Settlement Administrator shall send via United States First Class Mail the Settlement Documents,
25 consisting of the Court-approved Notice of Class Action Settlement, in a form substantially similar
26 to that attached hereto as Exhibit 1, and a Court-approved Claim Form, in a form substantially
27 similar to that attached hereto as Exhibit 2, to the Class Members. The Claim Form and/or Class
28 Notice shall contain, *inter alia*, the estimated amount of each Class Member’s Settlement Share,

1 assuming a 100% claim rate. Within thirty (30) calendar days of initial mailing of the Settlement
2 Documents by the Settlement Administrator, the Settlement Administrator shall send a reminder
3 postcard to all Class Member who have not submitted a claim, dispute, objection, or opt-out request
4 as of the date that is twenty-five (25) days from the initial mailing of Settlement Documents.

5 20. Claims Period. Class Members shall have forty-five (45) days from the date of
6 mailing of the Settlement Documents to return valid Claim Forms (the “Claims Period”) to the
7 Settlement Administrator. If the 45th day falls on a Sunday or holiday, the deadline to return Claims
8 Forms will be the next business day that is not a Sunday or holiday. Qualified Claimants will
9 receive their Settlement Share, after reduction for employer’s and employee’s share of taxes and
10 withholding with respect to the wage-portion of the share (“Individual Settlement Payments”), from
11 the settlement fund agreed upon, which will be and calculated pursuant to the terms of this
12 Agreement. Claim Forms bearing a postmark outside the Claims Period will be considered late
13 claims subject to Late Claims procedure set forth below.

14 21. Challenges to Class Member’s Employment Data. In calculating each individual
15 Class Member’s share of the Class Member Allocation, Defendant’s records regarding the
16 employment tenure of Class Members shall be presumed to be correct. Class Members who
17 challenge Defendant’s records must submit a challenge in writing to the Settlement Administrator
18 and will bear the burden of proof, *e.g.*, a Class Member who fails to provide written documentation
19 supporting a different number of Qualifying Work Weeks will have his or her challenge denied. All
20 such challenges must be received within the 45-day Claims Period in which Class Members must
21 submit claims. Defendant will investigate the challenge and determine whether any correction (*e.g.*,
22 to the number of Qualifying Work Weeks) for the Class Member making the challenge should be
23 made. In no case will a challenge result in a payment by Defendant in excess of the Maximum
24 Settlement Amount.

25 22. Opt-Outs/Requests for Exclusion from the Settlement. Class Members who wish to
26 “opt-out” of and be excluded from the Settlement must submit a written request for exclusion from
27 the Settlement bearing a post-mark from a date within the Claims Period. The request for exclusion
28 must: (1) state the Class Member’s name, Social Security Number, address and telephone number,

1 (2) unequivocally state that the Class Member requests exclusion from, or “opts out” of, the
2 Settlement, (3) be dated, and (4) be signed by the Class Member. Requests for Exclusion must be
3 made individually and cannot be made on behalf of a group of employees or on behalf of other Class
4 Members. If a Class Member submits a deficient opt-out request, the Settlement Administrator shall
5 notify the Class Member of the deficiency within three (3) business days of receipt. The Class
6 Member shall have until the end of the Claims Period plus three (3) business days to cure said
7 deficiencies, at which point his or her request for exclusion will be rejected if not received. Class
8 Members submitting untimely or deficient opt-out requests shall be bound by the Settlement and its
9 releases but will not be considered Qualified Claimants for settlement distribution purposes. If a
10 Class Member submits both a Claim Form and an opt-out request, the Claim Form will control and
11 the Class Member will be considered a Qualified Claimant, regardless of the date on either document
12 or the date the documents are postmarked.

13 23. Claim Form for the Class Representative. The Class Representative shall
14 automatically be deemed a Qualified Claimant and need not submit a Claim Form to claim his
15 maximum share of the Class Member Allocation. The Class Representative cannot opt out of the
16 Settlement.

17 24. Late and Deficient Claims. The Settlement Administrator shall notify Class Members
18 who submit Late Claim Forms or Deficient Claim Forms of the lateness and/or deficiency within
19 three (3) business days of receipt. If Defendant, in its sole discretion, so requests, the Parties may
20 mutually agree to accept otherwise valid Late Claim Forms that were not timely submitted during
21 the Claims Period. Late Claim Forms that are not accepted shall render the Late Claimant’s claim
22 for payment waived, but the Late Claimant will still be bound by the releases in this settlement.
23 Class Members submitting Deficient Claim Forms will have until the end of the Claims Period plus
24 three (3) business days to cure any deficiencies. Deficiencies that are not cured by the end of the
25 Claims Period shall operate to waive any Deficient Claimant’s claim for payment. However, the
26 Deficient Claimant will still be bound by the releases in this settlement.

27 25. Uncashed Checks. Qualified Claimants shall have one hundred and eighty (180) days
28 from the date their Individual Settlement Payment checks are dated to cash their settlement checks.

1 Any checks that are not cashed within that 180-day time period will be void thereafter, and the
2 monies represented by the checks shall be delivered to the California Department of Industrial
3 Relations Unclaimed Wages Fund, with an identification of the amount of funds attributable to each
4 Qualified Claimant.

5 26. Releases. Class Members who do not return a valid Claim Form within the Claims
6 Period forfeit their settlement allocation but shall remain subject to the Class Member Released
7 Claims as defined in this Settlement.

8 27. Objections to Settlement. All objections to the Settlement by any Class Member must
9 be filed with the Court and served upon all counsel of record for the Parties by no later than the
10 conclusion of the Claims Period, or in the case of a Class Member to whom the Settlement
11 Documents were re-mailed pursuant to the procedure set forth in Section VI.18, three (3) business
12 days after the Claims Period. This deadline applies notwithstanding any argument regarding alleged
13 non-receipt of the notice. Class Members who timely and validly opt-out and request exclusion from
14 the Settlement shall have no right to object and shall be foreclosed from making any objection to the
15 Settlement.

16 28. Administrator's Report. Within ten (10) days after the conclusion of the Claims
17 Period, the Settlement Administrator shall provide the Parties with a report reflecting the results of
18 the notice and claims administration process, including the number of claims, disputes, and opt-outs
19 received.

20 29. Response to Objections. The Parties may file a response to any objections submitted
21 by objecting Class Members no later than (i) twenty-one (21) days after the conclusion of the Claims
22 Period, or (ii) ten (10) days prior to the final approval hearing, whichever date is later.

23 30. Settlement Payments. No later than five (5) calendar days after Final Approval of the
24 Settlement is granted, the Settlement Administrator shall advise counsel for Defendant of the amount
25 necessary to fund the Settlement Fund as follows: (1) the total aggregate of the Individual Settlement
26 Payments to be paid to Qualified Claimants and any associated tax obligations, (2) the Claims
27 Administration Costs incurred and reasonably anticipated to be incurred by the Settlement
28 Administrator and as approved by the Court, (3) any Court-approved Service Enhancement Payment

1 to the Class Representative, (4) the Court-approved attorneys' fees for Class Counsel, (5) the Court-
2 approved litigation costs and expenses of Class Counsel, and (6) the PAGA Payment. Defendant
3 shall wire these funds into the Settlement Fund set up and controlled by the Settlement
4 Administrator not later than fifteen (15) calendar days following the Effective Date, and the
5 Settlement Administrator shall distribute all payments within fifteen (15) calendar days thereafter.
6 The total amount of all funds wired into the Settlement Fund shall not exceed the Maximum
7 Settlement Amount, except as provided in Sections V.12.E.1(c) and VI.14.

8 **VII. RELEASES**

9 31. Class Member Released Claims. Upon the Final Approval by the Court of this
10 Agreement and payment of amounts set forth herein, and except as to such rights or claims as may
11 be created by this Agreement, each and every Settlement Class Member, on behalf of themselves
12 and their heirs and assigns, regardless of whether he or she submitted a Claim Form, hereby releases
13 Defendant, and each of its past, present, and/or future parents, direct and/or indirect affiliates,
14 subsidiaries, divisions, related companies, successors and predecessors, and current and former
15 employees, officers, directors, shareholders, owners, partners, employee benefit plans, agents,
16 insurers, and successors and assigns of said entities ("Released Parties"), from the following claims
17 ("Released Claims") for the entire Class Period (from March 13, 2011, through April 5, 2016):

18 A. Any and all claims under the wage and hour laws and regulations of the state
19 of California that were or could have been asserted based on the facts pleaded in the Complaint
20 including or any amendments thereto, but not limited to, all statutes mentioned in the Complaint and
21 corresponding provisions of the relevant California Wage Order, including but not limited to
22 California Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1194,
23 1197, 1197.1, 2800, 2802, the Private Attorneys General Act ("PAGA") (Labor Code Sections 2698-
24 2699.5) and California Business and Professions Code sections 17200, *et seq.*, as related to claims
25 for: overtime; minimum wage; meal period premiums; rest break premiums; wage statements;
26 vacation pay; waiting time penalties; failure to keep required payroll records; unreimbursed business
27 expenses; restitution; civil and statutory penalties; interest; injunctive relief; costs and attorneys'
28 fees, costs and expenses; and

1 B. Any and all claims that were or could have been asserted based on the facts
2 pleaded in the Complaint or any amendments thereto for non-payment of wages, minimum wages,
3 overtime wages, or any other wage-related or recordkeeping-related claims; liquidated damages;
4 attorneys' fees, costs and expenses; pre- and post-judgment interest; or damages or relief of any kind
5 arising from the allegation that the Covered Positions were not properly compensated for all time
6 worked on a daily or weekly basis, under state or federal law, at any time through preliminary
7 approval.

8 32. Class Representative Released Claims. In addition to the Released Claims, upon the
9 Final Approval by the Court of this Agreement and payment of amounts set forth herein, and except
10 as to such rights or claims as may be created by this Agreement, Plaintiff Stayton individually
11 hereby unconditionally waives and forever releases any and all demands, damages, debts, liabilities,
12 actions, causes of action and claims of every kind and nature whatsoever, whether now known or
13 unknown, suspected or unsuspected, which he ever had or now have against Released Parties, and
14 each of them arising or accruing at any time prior to the date of the Order of Preliminary Approval.

15 33. California Civil Code Section 1542. Plaintiff acknowledges that they have had the
16 opportunity to review and have reviewed California Civil Code section 1542, which provides:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
18 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
19 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
20 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

20 Being fully informed of this provision of the Civil Code and understanding its provisions, Plaintiff
21 agrees to waive any rights under that section, and acknowledge that this Agreement and the release
22 contained herein extends to all claims that Plaintiff has or might have against the persons and entities
23 released, including those which are presently unknown to her or it.

24 **VIII. DUTIES OF THE PARTIES**

25 34. Duties of the Parties Prior to Preliminary Approval and Between Preliminary and
26 Final Approval. The Plaintiff shall promptly submit this Settlement Agreement to the Court together
27 with a Motion for Preliminary Approval of Settlement and Certification of Settlement Class.
28 Plaintiff's motion shall also seek an order:

- 1 A. Preliminarily approving the settlement;
- 2 B. Approving as to form and content the proposed Notice of Settlement;
- 3 C. Approving as to form and content the proposed Claim Form;
- 4 D. Directing the mailing of the Settlement Documents and reminder postcards to
5 Class Members as provided herein;
- 6 E. Preliminarily appointing Plaintiff and Class Counsel as representatives of the
7 Settlement Class;
- 8 F. Preliminarily approving settlement administration services to be provided by
9 the Settlement Administrator;
- 10 G. Preliminarily approving the proposed Class Representative service
11 enhancement payment to Plaintiff;
- 12 H. Preliminarily approving the application for payment of reasonable attorneys'
13 fees and reimbursement of litigation costs and expenses to Class Counsel; and
- 14 I. Scheduling a fairness hearing on the question of whether the proposed
15 settlement should be finally approved as fair, reasonable and adequate as to the members of the
16 Settlement Class.

17 35. Class Counsel agrees to provide to Defendant for review and approval the draft
18 motion for preliminary approval and the draft motion for final approval at least three (3) business
19 days before the filing of the motion(s). Class Counsel agrees not to file either motion without
20 providing Defendant an opportunity to review and approve drafts of the filings.

21 36. Defendant shall not oppose the preliminary and final approval of the proposed
22 settlement. Defendant shall not oppose enhancement awards to Plaintiff and the awards of
23 attorney's fees and reimbursement of expenses to Class Counsel as set forth herein.

24 37. Defendant shall provide to the Settlement Administrator and Class Counsel, within
25 fourteen days of the Date of the Preliminary Approval Order, the Class Data specified in Section
26 VI.16 above. Defendant shall submit this information in electronic format as specified by the
27 Settlement Administrator and shall thereafter, during the notice, approval, opt out/objection and
28 payment processes, assist the Settlement Administrator as necessary or as requested to use, correct,

1 or update this information in order to enable the Settlement Administrator to locate and contact Class
2 Members, and to provide information needed or requested by the Settlement Administrator in order
3 to make determinations on Class Members' challenges.

4 38. The Parties shall cooperate with each other and the Settlement Administrator during
5 the process of giving Class Members notice and opportunity to opt out or object to the Settlement, as
6 necessary and appropriate to assure effective communication to individual Class Members of
7 information about their rights and obligations under this Settlement Agreement.

8 39. The Parties agree that neither they nor their counsel will solicit or otherwise
9 encourage directly or indirectly Class Members to request exclusion from the Class, object to the
10 Settlement, object to any motion for approval of enhancement awards, award of attorney's fees,
11 and/or reimbursement of litigation costs and expenses or to pursue any such objection on appeal.

12 40. The Parties shall provide the Court, at least five (5) days prior to the Final Approval
13 and fairness hearing, a declaration by the Settlement Administrator of due diligence and proof of
14 mailing of the Settlement Documents and reminder postcards to Class Members as required by this
15 Agreement, and of the delivery results of the Settlement Administrator's mailings including tracing
16 and re-mailing efforts.

17 41. Duties of the Parties After Final Court Approval. Class Counsel will submit a
18 proposed order and judgment for Final Approval, which shall include findings and orders:

19 A. Approving the settlement, adjudging the terms thereof to be fair, reasonable
20 and adequate, and directing that its terms and provisions be carried out;

21 B. Approving the payment of Class Representative service enhancement payment
22 to the Plaintiff;

23 C. Approving Class Counsel's application for an award of attorneys' fees and
24 reimbursement of litigation costs and expenses;

25 D. Barring any further actions by Class Members regarding Released Claims who
26 have not timely and validly opted-out of the settlement; and

27 E. Providing that the Court will retain jurisdiction to oversee administration and
28 enforcement of the terms of the settlement and the Court's orders.

1 42. Class Counsel shall file and serve their motion for final approval of this Settlement
2 and motion for attorney’s fees, litigation costs, and Service Enhancement Payments, along with all
3 supporting evidence, no later than thirty (30) calendar days after the conclusion of the Claims
4 Period. At or in connection with the Final Approval Hearing, the Parties shall request that the Court
5 enter an Order and Judgment, which shall bind all Class Members who have not submitted a valid
6 and timely request for exclusion.

7 43. Following entry of the Court’s Order granting Final Approval of the Settlement
8 Agreement, the parties will each act to assure its timely execution and the fulfillment of all its
9 provisions, including but not limited to the following:

10 A. Should an appeal be taken from the Final Approval of the Settlement
11 Agreement, all parties will support the approval order on appeal;

12 B. Class Counsel and counsel for Defendant will assist the Settlement
13 Administrator as needed or requested in the process of assuring delivery of payments to Qualified
14 Claimants;

15 C. Class Counsel will certify to the Court completion of all payments required to
16 be made by this Settlement Agreement.

17 **IX. REVOKING, WITHDRAWING, VOIDING, OR MODIFYING THE SETTLEMENT**
18 **AGREEMENT**

19 44. Right to Revoke. Either Party has the right in its sole and exclusive discretion to
20 terminate and withdraw from the Settlement at any time prior to Final Approval if any of the
21 following occur: (a) the Settlement is construed in such a fashion that Defendant is required to pay
22 more than the Maximum Settlement Amount, except to the extent provided in Sections V.12.E.1(c)
23 and VI.14; or (b) the Court does not certify the Settlement Class as described herein, or does not
24 certify a class releasing all of the Released Claims defined herein, or otherwise makes an order
25 inconsistent with any of the terms of this Settlement Agreement (except for an order reducing Class
26 Counsel’s proposed attorneys’ fees or litigation costs and expenses, or the Class Representative’s
27 Service Enhancement Payment); or (c) the Court does not grant preliminary or final approval of the
28 Settlement. If for any reason the Settlement is not approved by the Court, or if a Party terminates

1 and withdraws from the Settlement pursuant to this paragraph, this Agreement and any related
2 settlement documents shall be null and void, and any class certified for settlement purposes will be
3 vacated. In such an event, neither the Agreement, nor the settlement documents, nor the negotiations
4 leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the
5 right to challenge all claims and allegations in the action, to assert all applicable defenses, and to
6 dispute the propriety of class certification on all applicable grounds. The right to revoke which is
7 provided for herein shall be exercised promptly in writing.

8 45. Defendant's Right to Withdraw. The Parties agree that Defendant may, at its option,
9 withdraw from the Settlement if five percent (5%) or more of the Class Members opt out of the
10 Settlement pursuant to the procedures set forth in Section VI.22. If Defendant exercises its option
11 to withdraw from the Settlement pursuant to this Paragraph, this Agreement and any related
12 settlement documents shall be null and void, and any class certified for settlement purposes will be
13 vacated. In such an event, neither the Agreement, nor the settlement documents, nor the negotiations
14 leading to the Settlement may be used as evidence for any purpose, and Defendant shall retain the
15 right to challenge all claims and allegations in the action, to assert all applicable defenses, and to
16 dispute the propriety of class certification on all applicable grounds. The right to withdraw which is
17 provided for herein shall be exercised in writing, within ten (10) calendar days after the
18 Administrator's Report is provided to Defendant's counsel.

19 46. Termination of Agreement. If the conditions of the Settlement set forth in this
20 Settlement Agreement are not satisfied, or if either Party terminates and withdraws from the
21 Settlement, or if the Court does not enter judgment consistent with this Stipulation, or if appellate
22 review is sought and on such review the Court's decision is materially modified or reversed, or, if
23 one or more of the terms of the Settlement is not approved or the Settlement with respect to one or
24 more such terms is materially modified or reversed, then this Settlement shall be canceled,
25 terminated, and shall have no force or effect. If Final Approval does not occur, or if this Settlement
26 is terminated, revoked, or canceled pursuant to its terms, the Parties to this Settlement shall be
27 deemed to have reverted to their respective status as of the date and time immediately prior to the
28 execution of this Settlement.

1 47. Modification of Agreement. This Agreement may not be changed, altered, or
2 modified, except in writing signed by counsel for the Parties hereto and approved by the Court. This
3 Agreement may not be discharged except by performance in accordance with its terms or by a
4 writing signed by the Parties hereto. This Stipulation shall be binding upon and inure to the benefit
5 of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and
6 assigns.

7 **X. PUBLIC COMMENT AND NON-DISPARAGEMENT**

8 48. Plaintiff and his counsel and Defendant and its counsel agree that they will not make
9 any public disclosure of this Agreement or the MOU, including but not limited to website or social
10 media postings of any type related to the settlement or litigation of this Action against Defendant.

11 49. The parties agree that neither party will issue any press release or other public
12 representation regarding the settlement other than as necessary to obtain court approval, effectuate
13 the terms of the settlement, and provide notice to the Class as ordered by the Court. The Parties and
14 their counsel agree that they will not initiate or have any contact with the press, respond to any press
15 inquiry or have any communication with the press about this case, other than in response to a press
16 inquiry to refer the inquiring party to the Notice of Settlement for further details about the
17 settlement. Plaintiff and Plaintiff's Counsel are permitted to reference this Settlement in response to
18 a subpoena, provided that Defendant is first given written notice of any such subpoena and ten (10)
19 business days to make any necessary filings to oppose production or otherwise seek a protective
20 order concerning same; or as otherwise legally compelled to do so provided that Defendant is first
21 given written notice thereof and ten (10) business days within which to make any necessary filings to
22 oppose production or otherwise seek a protective order, unless such notice is explicitly prohibited by
23 law. The Party served with the subpoena shall not be obliged to withhold the contents and terms of
24 this Settlement Agreement or otherwise expend its own resources to keep the Settlement Agreement
25 or its terms confidential; rather, the non-subpoenaed Party shall, at its own expense, be obliged to
26 take steps to have the subpoena, request or order withdrawn, quashed or limited if it so desires. The
27 Parties will cooperate with each other in good faith in connection with any such production and/or
28 any objections to production of documents stating any terms of the Agreement.

1 50. Nothing in Sections X.48 and X.49 shall preclude one of the Parties from disclosing
2 this Agreement, or any of its terms in the event of a breach to allow the non-breaching Party to
3 enforce its rights under the Agreement. Additionally, nothing in said Sections shall be construed to
4 limit Class Counsel’s ability to discuss the Agreement with Class Members, persons who self-
5 identify as being employed in Class Members, or the heirs or estates of deceased Class Members, or
6 in response to court order.

7 **XI. MISCELLANEOUS PROVISIONS**

8 51. Cy Pres. The Parties acknowledge that California Civil Procedure Code Section 384
9 and the Doctrine of Cy Pres are not applicable to this Settlement because the terms of this
10 Agreement expressly provide for the treatment of the entire Maximum Settlement Amount, whether
11 claimed or unclaimed.

12 52. No Retaliation. Defendant will not retaliate against Class Members for their
13 participation and/or election to participate in the benefits to be afforded any of them by the
14 settlement.

15 53. Extensions of Time. If either Party cannot reasonably comply with an obligation
16 under this Agreement by the deadline set forth herein applicable to that obligation, that Party may
17 apply to the Court for a reasonable extension of time to fulfill that obligation. Consent to such a
18 request for an extension will not be unreasonably withheld by the other Party.

19 54. No Impact on Benefit Plans. Neither the Settlement nor any amounts paid under the
20 Settlement will modify any previously credited hours or service under any employee benefit plan,
21 policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for
22 additional contributions to, benefits under, or any other monetary entitlement under Defendant
23 sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this
24 Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary,
25 earnings, wages, or any other form of compensation for the purposes of any of Defendant’s benefit
26 plan(s), policy(ies), or bonus program(s). Defendant retains the right to modify the language of its
27 benefit plans, policies and bonus programs to effect this intent, and to make clear that any amounts
28 paid pursuant to this Settlement are not for “hours worked,” “hours paid,” “hours of service,” or any

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

4 55. Governing Law. The rights and obligations of the parties hereunder shall be
5 construed and enforced in accordance with, and shall be governed by, the laws of the State of
6 California, without regard to principles of conflict of laws.

7 56. Curing Provision Held Invalid. If any provision of this Agreement or the application
8 thereof is held invalid, the Parties shall, consistent with the Mutual Full Cooperation provision in
9 Section XII.58 below, meet and confer in an attempt to modify the Settlement so that such
10 invalidation shall not affect other provisions or applications of this Agreement.

11 **XII. PARTIES' AUTHORITY**

12 57. The signatories hereby represent that they are fully authorized to enter into this
13 Settlement Agreement and to bind the Parties hereto to the terms and conditions hereof.

14 **XIII. MUTUAL FULL COOPERATION**

15 58. The Parties agree to fully cooperate with each other to accomplish the terms of this
16 Settlement Agreement, including but not limited to, executing such documents and taking such other
17 action as may reasonably be necessary to implement the terms of this Settlement Agreement. The
18 Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by
19 this Settlement Agreement and any other efforts that may become necessary by order of the Court or
20 otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as
21 practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance
22 and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's
23 preliminary and Final Approval of this Settlement Agreement.

24 **XIV. NO ADMISSION OF LIABILITY OR WRONGDOING; INADMISSABILITY OF** 25 **SETTLEMENT AS EVIDENCE**

26 59. Nothing contained herein, nor the consummation of this Settlement Agreement, is to
27 be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
28 of Defendant. Defendant denies any liability. The parties agree that this is a settlement of disputed

1 claims and that California Labor Code section 206.5 is therefore inapplicable. Each of the Parties
2 hereto has entered into this Agreement with the intention to avoid further disputes and litigation with
3 the attendant inconvenience and expenses. This Agreement is a settlement document and shall be
4 inadmissible in evidence in any proceeding. The preceding sentence shall not apply to an action or
5 proceeding to approve, interpret, or enforce this Agreement.

6 **XV. NOTICES**

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

11 **To Class Counsel:**

12 EDWIN AIWAZIAN, Bar No. 232943
13 LAWYERS *for* JUSTICE, PC
14 410 West Arden Avenue, Suite 203
15 Glendale, California 91203
16 Telephone: (818) 265-1020
17 Facsimile: (818) 265-1021

11 **To Defendant's Counsel:**

12 ROBERT G. HULTENG, Bar No. 071293
13 JOSHUA D. KIENITZ, Bar No. 244903
14 LISA K. HORGAN, Bar No. 267632
15 LITTLER MENDELSON, P.C.
16 333 Bush Street, 34th Floor
17 San Francisco, CA 94104
18 Telephone: 415.433.1940
19 Facsimile: 415.399.8490

18 61. If the identity of the person(s) to be notified for any party changes, or their address
19 changes, that party shall notify all other parties of said change in writing.

20 **XVI. CAPTIONS AND INTERPRETATIONS**

21 62. Paragraph titles or captions contained herein are inserted as a matter of convenience
22 and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any
23 provision hereof. Each term of this Agreement is contractual and not merely a recital.

24 63. The Parties hereto agree that the terms and conditions of this Agreement are the result
25 of lengthy, arms-length negotiations between the Parties and that this Agreement shall not be
26 construed in favor of or against any Party by reason of the extent to which any Party or his, her or its
27 counsel participated in the drafting of this Agreement.

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1 **XVII. INTEGRATION CLAUSE**

2 64. This Settlement Agreement contains the entire agreement between the Parties relating
3 to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
4 understandings, representations, and statements, whether oral or written and whether by a Party or
5 such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

6 **XVIII. NO PRIOR ASSIGNMENTS**

7 65. This Agreement shall be binding upon and inure to the benefit of the Parties hereto
8 and their respective heirs, trustees, executors, administrators and successors. The Parties hereto
9 represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred,
10 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
11 liability, claim, demand, action, cause of action or rights herein released and discharged except as set
12 forth herein.

13 **XIX. SETTLEMENT CLASS MEMBER SIGNATORIES**

14 66. It is agreed that because the members of the Settlement Class are so numerous, it is
15 impossible or impractical to have each member of the Settlement Class execute this Agreement. The
16 Notice of Settlement will advise all Class Members of the binding nature of the release with respect
17 to Settlement Class Members, and such shall have the same force and effect as if this Settlement
18 Agreement were executed by each member of the Settlement Class.

19 **XX. COUNTERPARTS**

20 67. This Agreement may be executed in counterparts with signatures transmitted by
21 facsimile or as an electronic image of the original signature. When each Party has signed and
22 delivered at least one such counterpart, each counterpart shall be deemed an original, and, when
23 taken together with other signed counterparts, shall constitute one Settlement Agreement, which
24 shall be binding upon and effective as to all Parties. A facsimile signature shall have the same force
25 and effect as the original signature, if and only if it is transmitted from counsel for one party to the
26 other. Such transmissions shall be interpreted as verification by the transmitting counsel that the
27 signature is genuine and that the party signing has authorized and reviewed the agreement.

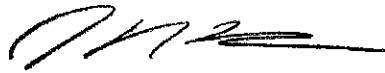
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IT IS SO STIPULATED AND AGREED:

Dated: March 15, 2017

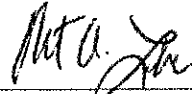
LITTLER MENDELSON, P.C.



JOSHUA D. KIENITZ
LISA K. HORGAN
Attorneys for Defendant
MESA ENERGY SYSTEMS, INC.

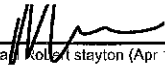
Dated: March 15, 2017

MESA ENERGY SYSTEMS, INC.



Robert A. Lake
President & Chief Operating Officer
MESA ENERGY SYSTEMS, INC.

PLAINTIFF

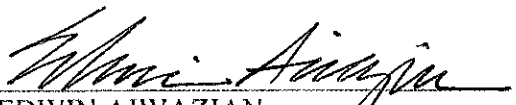


Michael Stayton (Apr 18, 2017)

MICHAEL STAYTON

Dated: March 24, 2017

LAWYERS *for* JUSTICE, PC



EDWIN AIWAZIAN
Attorneys for Plaintiff MICHAEL STAYTON