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10 in the State of California

11 **SUPERIOR COURT OF CALIFORNIA**

12 **FOR THE COUNTY OF KERN**

13 TODD POWELL, individually, and as a Private
14 Attorney General Act Representative of
15 similarly aggrieved individuals in the State of
16 California,

17 Plaintiffs,

18 vs.

19 BADGER DAYLIGHTING CORP., an Indiana
20 Corporation; and DOES 1 through 20, inclusive,

21 Defendants.

CASE NO.: BCV-15-10120

**STIPULATION AND AGREEMENT FOR
CLASS ACTION SETTLEMENT**

1 **RECITALS**

2 A. This Stipulation and Agreement for Class Action Settlement (the “Settlement”) is
3 made for the sole purpose of consummating settlement in the above-captioned matter on a class-
4 wide basis and is made in compromise of disputed claims. Because this is a putative class action,
5 the Settlement must receive preliminary and final approval by the Court.

6 B. On October 13, 2015, Plaintiff Todd Powell filed a civil Complaint against
7 Defendant Badger Daylighting Corp. (“Badger”) in Kern County Superior Court for the State of
8 California alleging a violation of California’s Private Attorneys General Act of 2004 (“PAGA”),
9 codified at Labor Code section 2699.5, seeking to represent all “Similarly Aggrieved” employees
10 in California (“Lawsuit”). The Lawsuit is predicated on three allegations: (i) that Badger required
11 Powell and all Similarly Aggrieved employees to work through meal and rest periods (or they were
12 interrupted); (2) Badger failed to pay Powell and all Similarly Aggrieved employees the amount
13 due in overtime/double-time pay; and (3) Badger failed to reimburse Powell and all Similarly
14 Aggrieved employees for business expenses (mileage for using their personal vehicles to drive to
15 job sites) (hereinafter “Lawsuit”). Powell sought PAGA civil penalties and underpaid wages under
16 Section 558 for himself and similarly aggrieved employees, and attorney’s fees and costs, dating
17 back to October 13, 2014. Thereafter, on October 29, 2015, Powell filed a nearly identical First
18 Amended Complaint (“FAC”), which is the operative complaint. On December 28, 2015, Badger
19 filed an Answer in which it denied Powell’s allegations and asserted 17 affirmative defenses.

20 C. The Class Representative is Plaintiff Todd Powell. The Class Representative and
21 Badger are collectively referred to herein as the “Parties.”

22 D. The Parties enter into the Settlement on a conditional basis. In the event the Court
23 does not enter an Order Granting Final Approval of the Settlement, or in the event that such Order
24 Granting Final Approval does not become final for any reason, the Settlement shall be deemed null
25 and void, and will be of no force or effect whatsoever, and will not be referred to or utilized for any
26 purpose whatsoever.

1 E. The making of this Agreement will not be construed as an admission by Badger of
2 any liability or wrongdoing of any kind associated with the claim and allegations asserted in the
3 Lawsuit, because Badger denies that the Lawsuit is appropriate for class action treatment and
4 Badger contends that it has complied at all times with the California Labor Code, all applicable
5 regulations and Wage Orders issued by the Industrial Welfare Commission, and all applicable
6 Labor Agreements with the International Union of Operating Engineers Local 3 and Local 12, and
7 denies that any Aggrieved Employee/Class Member is entitled to additional compensation,
8 restitution, interest or further payment of any kind under California law.

9 F. After considering the expense and uncertainty associated with the Lawsuit, Powell
10 and Badger desire to settle fully all differences between them, including, but in no way limited to,
11 those differences arising from all damages sought by Powell in the Lawsuit and arising from the
12 employment relationship or employment separation between the Parties, whether known or
13 unknown.

14 G. Counsel diligently prosecuted the Lawsuit, including, but not limited to thoroughly
15 investigating the case, conducting informal and formal discovery, reviewing Badger's time and
16 payroll records, assessing alleged liability and alleged damages. Based on Counsel's analysis of the
17 facts and circumstances in this Lawsuit and similar litigation and prior experience litigating wage
18 and hour class action cases and PAGA cases throughout California, Counsel is of the opinion that
19 the Agreement to settle this matter for the consideration and on the terms set forth herein is fair,
20 reasonable, and adequate and is in the best interest of the Similarly Aggrieved employees.

21 H. The Parties stipulate and agree that this Lawsuit be settled and compromised as
22 between the Powell and the Similarly Aggrieved employees, on the one hand, and Badger, on the
23 other hand, subject to the terms and conditions set forth in this Agreement and the approval of the
24 Court.

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1 STIPULATION AND AGREEMENT

2 **I. DEFINITIONS**

3 **A.** The terms “**Agreement**,” “**Settlement Agreement**,” and “**Settlement**” mean this
4 Stipulation and Agreement for Class Action Settlement, which the Parties acknowledge sets forth
5 all material terms and conditions of the settlement between them, and which is subject to Court
6 approval.

7 **B.** “**Action**” and “**Lawsuit**” means the Class Action lawsuit herein, generally known
8 as *Todd Powell, individually, and as a Private Attorney General Act Representative of similarly*
9 *aggrieved individuals in the State of California v. Badger Daylighting Corp., et al.*, Kern County
10 Case No. BCV-15-10120.

11 **C.** “**Class Counsel**” means Ron Makarem, Gene Williams, and Jean-Paul Le Clercq of
12 Makarem & Associates.

13 **D.** “**Class List**” means the list of names, last known residential addresses, and social
14 security numbers of Class Members for whom Defendant possess such information at the time of
15 entry of the Court’s Order Granting Preliminary Approval. The Class List will indicate, for each
16 Class Member, the number of weeks worked during the Class Period.

17 **E.** “**Class Member(s)**,” “**Class**” and “**Settlement Class**” means all former and current
18 Operators and Swampers employed by Badger anywhere in the State of California during the Class
19 Period. The Class is divided into the following four categories or subclasses:

- 20 (i) Former Employees/NorCal: Class Members formerly employed by Badger in
21 Northern California (includes Badger’s locations in Sacramento, San Jose, Martinez,
22 and Fresno).
- 23 (ii) Former Employees/SoCal: Class Members formerly employed by Badger in
24 Southern California (includes Badger’s locations in Bakersfield, Los Angeles,
25 Riverside, San Diego).
- 26 (iii) Current Employees/NorCal: Class Members currently employed by Badger in
27 Northern California; and

1 (iv) Current Employees/SoCal: Class Members currently employed by Badger in
2 Southern California.

3 **F. “Class Notice”** means a notice entitled “Notice of Class Action Settlement,” in the
4 form substantially similar to that attached hereto as **Exhibit A**.

5 **G. “Class Period”** means the period from June 9, 2013 through the date the Court
6 grants Preliminary Approval of the Settlement.

7 **H. “Class Representative”** and **“Named Plaintiff”** means Todd Powell.

8 **I. “Gross Fund Value”** means the amount of \$660,000, which amount will be all-
9 inclusive, including Individual Settlement Payments to the Settlement Class, any Enhancement
10 Award to the Class Representative as awarded by the Court, Settlement Administration Costs as
11 approved by the Court, attorneys’ fees and costs to Class Counsel as approved by the Court, the
12 employee’s portion of payroll tax burdens on such sums paid out as wages under the Settlement,
13 and PAGA Payment. The employer portion of payroll taxes shall be paid separately by Badger
14 outside of the common fund. The Settlement is a cash, reversionary settlement.

15 **J. “Court”** means the Kern County Superior Court.

16 **K. “Effective Settlement Date”** means the date of final approval if no objections are
17 filed to the settlement. If objections are filed and overruled, and no appeal is taken of the final
18 approval order, then the effective date of final approval will be sixty-five (65) days after the trial
19 court enters final approval. If an appeal is taken from the Court's overruling of objections to the
20 settlement, then the effective date of final approval will be twenty (20) days after the appeal is
21 withdrawn or after an appellate decision affirming the final approval decision becomes final.

22 **L. “Enhancement Award”** means the portion of the Gross Fund Value awarded by
23 the Court and paid to the Class Representative for his service in connection with being the Class
24 Representative.

25 **M. “Exclusion Deadline”** is forty-five (45) days after the date the Notice Packet is first
26 mailed by the Settlement Administrator to the Class Members.

1 **N. “Final Approval Hearing”** means a hearing set by the Court, pursuant to class
2 action procedures and requirements, for the purpose of determining the fairness, adequacy, and
3 reasonableness of the Settlement.

4 **O. “First Amended Complaint”** means the First Amended Complaint filed on
5 October 29, 2015 in this Class Action.

6 **P. “Individual Settlement Payment”** means the gross amount paid to each member of
7 the Settlement Class who does not timely opt out of the Settlement.

8 **Q. “Net Fund Value”** means the Gross Fund Value, less Court approved attorneys’
9 fees and costs (costs not to exceed \$7,000), less Court-approved administration costs, less Court
10 approved Enhancement Award, less the employee portion of payroll tax burdens associated with
11 those payments, less the \$7,500 credit to Badger for the settlement payments that it paid to eight
12 class members,¹ and the PAGA Payment.

13 **R. “Net Fund Value to Current Employees”** means the 28.6% portion of the Net
14 Fund Value that is allocated to Class Members who are current employees.

15 **S. “Net Fund Value to Former Employees”** means the 71.4% portion of the Net
16 Fund Value that is allocated to Class Members who are former employees.

17 **T. “Notice of Estimated Individual Settlement Payment”** means a notice entitled
18 “Notice of Estimated Individual Settlement Payment,” in the form substantially similar to that
19 attached hereto as Exhibit A, which sets forth a calculation of an individual Class Member’s
20 anticipated share of the Net Fund Value.

21 **U. “Notice Packet”** means a mailing from the Settlement Administrator to the
22 Settlement Class which contains the Class Notice, Notice of Estimated Individual Settlement
23 Payment, Request for Exclusion Form, and Objection Form.

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26 ¹ Badger previously entered into settlement agreements with the following eight Class Members: (1) Efrain Leon; (2)
27 Luis F. Rodriguez; (3) William Ray Gibson; (4) Peter Gilmour; (5) Martin Tubb; (6) Raul A. Laitano; (7) Gilbert
28 Molina; and (8) Ruben T. Wyles. Due to the Parties’ dispute over Badger’s prior settlement agreements with the
foregoing Class Members, where the settlement payments collectively total \$7,500, the Parties have agreed that, for
purposes of resolution, Badger shall receive a credit totaling \$7,500 previously issued to the eight Class Members.

1 V. **“Objection Form”** means a form which Class Members may utilize if they desire
2 to object to the Settlement, in the form substantially similar to that attached hereto as **Exhibit C**.

3 W. **“Order Granting Final Approval”** means an order executed and filed by the Court
4 granting final approval to the Settlement and entering judgment thereon. Said Order Granting
5 Final Approval will be in the form substantially similar to that attached hereto as **Exhibit D**.

6 X. **“Order Granting Preliminary Approval”** means an order executed and filed by
7 the Court granting preliminary approval to the settlement. Said Order Granting Preliminary
8 Approval will be in the form substantially similar to that attached hereto as **Exhibit E**.

9 Y. **“PAGA Payment”** means the amount of settlement funds payable to the California
10 Labor and Workforce Development Agency (“LWDA”), constituting 75% of the settlement
11 amount attributed to resolving the PAGA claim. The PAGA Payment shall be paid from the
12 Maximum Settlement Amount.

13 Z. **“Participating Class Member”** means any Settlement Class member who does not
14 timely opt out of the Settlement, as provided in Section V(E), below.

15 AA. **“Preliminary Approval Date”** means the date on which the Court filed the Order
16 Granting Preliminary Approval.

17 BB. **“Released Claims”** means all known and unknown claims, debts, liabilities,
18 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of
19 action contingent or accrued for, arising out of the allegations and claims asserted in the
20 Complaint, including without limitation to, any and all claims for alleged unpaid wages (including
21 but not limited to overtime, final pay upon termination, and minimum wage), alleged unpaid meal
22 and rest break premiums, itemized wage statement penalties, waiting time penalties under the
23 California Labor Code or Business & Professions Code (including Section 17200 *et seq.*), penalties
24 pursuant to the Private Attorneys General Act (“PAGA”) and claims for restitution and other
25 equitable relief, liquidated damages, punitive damages, or penalties; and any other benefit claimed
26 on account of the allegations asserted in Complaint. This release shall apply to all claims arising at
27 any point between June 9, 2013 and the date the Court grants final approval of the Settlement.

1 **CC. "Released Parties"** means Badger Daylighting Corp., and any parent, subsidiary,
2 affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys
3 thereof.

4 **DD. "Request for Exclusion"** means a Settlement Class member's completed Request
5 for Exclusion form to opt out of the Settlement in the form substantially similar to that attached
6 hereto as **Exhibit B**.

7 **EE. "Reversionary Fund"** means any amounts allocated from the Net Fund Value that
8 are not, claimed, or used after distribution to the Settlement Class, including, without limitation,
9 amounts not claimed by Class Members by, for example, failing to negotiate (i.e., cash) a
10 settlement check within one hundred and eighty (180) days of issuance. Under no circumstances
11 shall the Reversionary Fund exceed 50% of the Net Fund Value.

12 **FF. "Settlement Administrator"** means CPT Group, Inc.

13 **GG. "Settlement Administrator Costs"** means the costs of the Settlement
14 Administrator to administer the Settlement, not to exceed \$15,000.

15 **II. SETTLEMENT AMOUNTS**

16 The following settlement chart is intended solely for the convenience of the Court:

17 **Gross Fund Value Allocations**

18 Gross Fund Value	\$660,000
19 Credit to Badger for Prior Settlements	\$7,500
20 Net Fund Value (Payments to the Class & Employee Payroll Taxes) (Estimated)	\$399,470
21 Enhancement to Named Plaintiff (as awarded by the Court)	\$7,500
22 Payment to LWDA ("PAGA Payment")	\$3,750
23 Attorneys' Fees and Costs (as awarded by the Court)	\$219,780 (Attorneys' fees – 33% of Gross Fund Value) + Costs not to exceed \$7,000
24 Settlement Administration Costs (as awarded by the Court) (Estimated)	\$15,000
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1 Upon the occurrence of the Effective Settlement Date, and after all conditions precedent
2 have occurred as set forth in this Agreement, the Settlement Administrator will cause to be made
3 all disbursements required by the Settlement in accordance with its terms.

4 **A. The Gross Fund Value**

5 The Gross Fund Value is \$660,000, which amount will be all-inclusive, including
6 Individual Settlement Payments to all Participating Class Members, any Enhancement Award to
7 the Class Representative as awarded by the Court, Settlement Administration Costs as approved by
8 the Court, attorneys' fees and costs to Class Counsel as awarded by the Court, the employee
9 portion of payroll tax burdens on such sums that are paid out as wages under the Settlement, and
10 PAGA Payment. Badger shall receive a \$7,500 credit for the collective amount of the settlement
11 payment that it previously paid to eight Class Members.

12 **B. Net Fund Value**

13 1. The Net Fund Value is estimated to be \$399,470. Badger will pay to the
14 Settlement Administrator its employer-portion of FICA, FUTA, and any other employer-paid
15 standard tax withholdings for the portion of each payment to a Participating Class Member
16 classified as wages. Those standard tax withdrawals will be paid outside the Gross Fund Value.

17 2. Individual Settlement Payments will be paid from the Net Fund Value to
18 Participating Class Members as follows:

19 a. Badger will provide the Settlement Administrator with the total number of
20 workweeks worked by Participating Class Members during the Class Period,
21 including a breakdown of the number of workweeks worked by Participating Class
22 Members who are currently employed by Badger and the total number of
23 workweeks worked during the Class Period by Participating Class Members who
24 were formerly employed by Badger.

25 b. The Net Fund Value will be paid to Participating Class Members using the
26 settlement ratio of 2.5 (former employee) to 1 (current employee) because only
27 former employees would have been entitled to waiting time penalties under Labor

1 Code Sections 201-203, which constitute a substantial portion of alleged individual
2 damages.

3 c. 28.6% of the Net Fund Value, or \$115,320.92, will be divided among those
4 Participating Class Members who are currently employed by Badger, based on the
5 number of workweeks worked by each such employee during the Class Period as a
6 percentage of all workweeks worked by Participating Class Members who are
7 currently employed by Badger who are currently employed by Badger.

8 d. 71.4% of the Net Fund Value, or \$287,899.08, will be divided among those
9 Participating Class Members who were formerly employed by Badger, based on the
10 number of workweeks worked by each such employee during the Class Period as a
11 percentage of all workweeks worked during the Class Period by Participating Class
12 Members who were formerly employed by Badger.

13 e. Badger's payroll records shall control with respect to workweek
14 calculations, but Class Members will have the right to challenge their number of
15 workweeks.

16 f. The Settlement Payments to the eight Class Members who previously
17 received settlement payments will be offset by the amount previously paid to them
18 as follows:

19 i. Efrain Leon shall each only receive the portion of his Individual
20 Settlement Payment that exceeds \$1,500. If the Individual Settlement Payments to
21 Efrain Leon is less than \$1,500, then he shall not be entitled to receive any further
22 payment.

23 ii. Luis F. Rodriguez, William Ray Gibson, Peter Gilmour, Martin
24 Tubb, Raul A. Laitano, Gilbert Molina and Ruben T. Wyles shall each only receive
25 the portion of their Individual Settlement Payments that exceeds \$750. To the
26 extent the Individual Settlement Payment to any of these individuals does not
27 exceed \$750, that individual shall not be entitled to receive any further payment.

1 3. The Individual Settlement Payment for each Participating Class Member
2 reflects negotiated amounts for payments for alleged unpaid wages (including but not limited to
3 overtime, final pay upon termination, and minimum wage), alleged unpaid meal and rest break
4 premiums, itemized wage statement penalties, waiting time penalties, and claims for restitution and
5 other equitable relief, liquidated damages, punitive damages, or penalties; and all other claims as
6 described more fully above as Released Claims.

7 4. For purposes of calculating Individual Settlement Payments, each
8 Participating Class Member will be credited with the total workweeks worked by the individual
9 Class Member during the Class Period, as determined by the start and end dates of employment
10 with Badger, with no deduction for leaves of absence or vacation periods.

11 5. Each Individual Settlement Payment will be subject to withholdings and
12 deductions for the Participating Class Member's portion of required tax withholdings. The
13 Settlement Administrator will issue to each Participating Class Member a Form W-2 and a Form
14 1099 for each Individual Settlement Payment, reflecting all deductions and withholdings as
15 required by law. Such payments will not count as earnings or compensation with respect to any
16 benefit plan (*e.g.* 401(k) plan, retirement plan, etc.) available to Badger's employees. Each
17 Individual Settlement Payment will be allocated one-third (1/3) to wages (Form W-2), one-third
18 (1/3) to penalties (Form 1099), and one-third to pre-judgment interest (Form 1099).

19 6. The Individual Settlement Payment checks will be void after one hundred
20 eighty (180) days from the date of issuance. Any uncashed Individual Settlement Payment check
21 will revert to and/or remain Badger's property.

22 7. Within ten (10) business days of final approval by the Court, Badger will
23 deposit money, in an amount equal to the Gross Fund Value, to pay (1) the Settlement Class per the
24 terms of the final settlement agreement, and (2) court approved attorneys' fees and costs,
25 administration costs, and the enhancement payment into an interest-bearing account, through the
26 Settlement Administrator.

1 8. To the extent that there are amounts allocated from the Net Fund Value that
2 are not awarded, claimed or used, such amounts shall revert to and/or remain Badger's property
3 and shall not be paid out as part of this settlement. This reversion is intended to include any and all
4 amounts left over after distribution to the Class Members, including, without limitation: amounts
5 allocated to the Settlement Class members who do not file Claim Forms; and amounts not claimed
6 by Class Members by, for example, failing to negotiate (i.e., cash) a settlement check within one
7 hundred and eighty (180) days of issuance.

8 **C. Class Representative Enhancement**

9 1. In conjunction with the Motion for Final Approval of the Settlement, Class
10 Counsel will request, and Badger will not oppose, an individual Enhancement Award for the Class
11 Representative in the amount of Seven Thousand Five Hundred Dollars (\$7,500). The
12 Enhancement is to compensate the Class Representative for his service and risk in connection with
13 being a Class Representative. Any portion of the Enhancement not approved by the Court will
14 revert to the Net Fund Value and be distributed to Participating Class Members.

15 2. Any Enhancement awarded by the Court will not be treated as wages. The
16 Class Representative will receive an individual Form 1099 relating to such payment. The Class
17 Representative will be solely liable for and pay any and all taxes, costs, interest, assessments,
18 penalties, or damages by reason of payment of the individual Enhancement Award. The
19 Enhancement will not count as earnings or compensation for purposes of any benefit plans (e.g.
20 401(k) plan, retirement plan, etc.) available to Badger's employees.

21 3. The Enhancement is in addition to the Individual Settlement Payments
22 allocated to the Class Representative under the Settlement. The Class Representative agrees that
23 he will not opt out of, or object to, the Settlement.

24 4. At the time of execution of the settlement agreement, Powell will sign a full
25 release of all claims against Badger. By operation of the Order Granting Final Approval, the Class
26 Representative will be deemed to have generally released all claims against the Released Parties,
27 including any and all obligations, debts, claims, liabilities, demands, and causes of action of every

1 kind, nature and descriptions whatsoever, whether known or unknown, suspected or claimed,
2 which they ever had, now have or may hereafter acquire, by reason of any matter, cause, event or
3 thing whatsoever occurring or arising at any time before the Order Granting Final Approval is
4 entered. In addition, the Class Representatives will have expressly waived and relinquished, to the
5 fullest extent permitted by law, the provisions, rights, and benefits of section 1542 of the California
6 Civil Code.

7 Civil Code section 1542 provides as follows:

8 A general release does not extend to claims which the creditor does
9 not know or suspect to exist in his or her favor at the time of
10 executing the release, which if known by him or her must have
11 materially affected his or her settlement with the debtor.

11 **D. Class Counsel's Attorneys' Fees and Costs**

12 1. In conjunction with the Motion for Final Approval, Class Counsel will
13 request that the Court approve an award of attorneys' fees in an amount not to exceed 33.3%
14 percent of the Gross Fund Value, as well as costs in an amount to be confirmed by Class Counsel
15 within 15 days and not to exceed \$7,000. Class Counsel's attorneys' fees and costs will be paid out
16 of the Gross Fund Value. Such application will be set for hearing concurrently with the Motion for
17 Final Approval.

18 2. Badger and its counsel will not object to Class Counsel's application for an
19 award of attorneys' fees and costs, provided the requested amounts do not exceed the amounts
20 stated above. To the extent that the Court approves less than the amount of attorneys' fees or costs
21 than Class Counsel requests, the difference between the requested and awarded amounts will be
22 added to the Net Fund Value for distribution to the Settlement Class.

23 3. As a condition of the Settlement, Class Counsel agree to pursue their
24 attorneys' fees and costs only in the amount and manner reflected herein.

25 **E. Costs of Settlement Administration**

26 The Settlement Administrator Costs shall not exceed Fifteen Thousand Dollars (\$15,000),
27 and will be paid from the Gross Fund Value. The Net Fund Value payable to the Class Members

1 will increase if the Settlement Administrator Costs are less than Fifteen Thousand Dollars
2 (\$15,000).

3 **III. RELEASES BY PARTICIPATING CLASS MEMBERS**

4 In exchange for the consideration under the Settlement, and upon the Order Granting Final
5 Approval, all Participating Class Members, on behalf of themselves and their current, former, and
6 future heirs, executors, administrators, attorneys, agents, and assigns, will and hereby do forever
7 release, waive, acquit, and discharge the Released Parties of the Released Claims arising at any
8 point between June 9, 2013 and the date the Court grants final approval of the Settlement.

9 **IV. CONDITIONAL CLASS CERTIFICATION**

10 1. The Parties stipulate to a Second Amended Complaint (“SAC”), whereby
11 Powell seeks to represent all current and former CDL Operators (“Operators”) and Non CDL
12 Operators (“Swampers”) employed by Badger in the State of California (“Putative Class
13 Members”) during the Class Period, alleging the same allegations in the FAC, in addition to other
14 claims under the California Labor Code. The Parties also stipulate that Badger will answer the
15 SAC within 10 days of the date that the SAC is filed, whereby Badger will assert its affirmative
16 defenses and general denial.

17 2. The Settlement Class consists of all former and current Operators and
18 Swampers employed by Badger anywhere in the State of California during the Class Period,
19 divided into four categories or subclasses:

- 20 i. Former Employees/NorCal: Class Members formerly employed by Badger
21 in Northern California (includes Badger’s locations in Sacramento, San Jose,
22 Martinez, and Fresno)
- 23 ii. Former Employees/SoCal: Class Members formerly employed by Badger in
24 Southern California (includes Badger’s locations in Bakersfield, Los
25 Angeles, Riverside, San Diego)
- 26 iii. Current Employees/NorCal: Class Members currently employed by Badger
27 in Northern California; and

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iv. Current Employees/SoCal: Class Members currently employed by Badger in Southern California

3. The Parties stipulate to class certification for purposes of this settlement only. The trial court has not ruled on class certification in the underlying litigation. Consequently, the “Settlement Class” has been established for purposes of administration and resolution of this matter only. It is not, and it should not be construed as, any admission of fact or law in this matter or any other matter that class certification is appropriate. If the Court does not grant either preliminary or final approval of this settlement, then the parties revert to their previous positions, Badger will not stipulate to class certification, and the parties shall file a Stipulation striking the Second Amended Complaint so that the FAC becomes the operative complaint.

V. SETTLEMENT APPROVAL AND PAYMENT PROCEDURES

A. Request for Preliminary and Final Approval

The Parties will cooperate fully in requesting preliminary and final approval of the Settlement by the Court, including a determination by the Court that the Settlement is fair, reasonable and adequate. The Parties will also cooperate fully and promptly request that, as provided for by the Settlement, the Court approve the proposed forms of notices, orders, and other documents necessary to implement the Settlement. Should the Court require or suggest edits to any documents in the Notice Packet, the proposed Order Granting Preliminary Approval, or the Proposed Order granting Final Approval, the Parties will work cooperatively to edit the document(s) accordingly and obtain the Court’s approval.

B. Request for Dismissal of Private Attorneys General Act (PAGA) Claims

Plaintiffs will take all acts necessary to obtain the dismissal of the Participating Class Members’ claims under the Private Attorneys General Act (PAGA), per the requirements set forth in Labor Code Section 2699(l). The Parties will cooperate fully in requesting the dismissal of the PAGA claims by the Court and Labor and Workforce Development Agency LWDA).

C. Class List to Be Provided by Badger to the Settlement Administrator

1 1. Within ten (10) days of the latter of preliminary approval of this settlement
2 or court approval of settlement class notice to the class, Badger will provide the Settlement
3 Administrator with the names and last known contact information for the Settlement Class
4 members, including last known address and telephone number, as well as the total number of
5 weeks that each Settlement Class Member worked for Badger during the Class Period.

6 2. The Class List, and any other data provided by Badger to the Settlement
7 Administrator, shall be treated as confidential and shall not be used by the Settlement
8 Administrator for any purpose other than as permitted by the Settlement. Further, the Settlement
9 Administrator shall use commercially reasonable efforts to secure the data provided by Badger at
10 all times so as to avoid inadvertent or unauthorized disclosure or use of such data other than as
11 permitted by the Settlement. At no time during the Settlement process will any Class Member's
12 full social security number be filed by the Parties or the Settlement Administrator with the Court,
13 except under seal as may be ordered by the Court. The Settlement Administrator shall ensure that
14 the Class Notice and any other communications to Class Members shall not include the Class
15 Members' social security number, except for the last four digits, if necessary.

16 3. Any dispute or issues regarding whether an individual should be deleted
17 from or added to the Class List shall be resolved by mutual agreement of Class Counsel and
18 Badger's counsel. In the event counsel are unable to reach an agreement, either Party may request
19 that the Court make a final decision. Any such changes to the Class List shall be reflected in the
20 total weeks worked for the entire Class.

21 4. The Settlement is entered into based upon a total current estimate of 171
22 Settlement Class members (102 former employees and 69 current employees) as of August 4, 2017
23 (the "Preliminary Estimate.")

24 **D. Notice of Class Action**

25 1. Within ten (10) days of receiving the Settlement Class member contact
26 information from Badger, the Settlement Administrator will send Class Members, by first-class
27 mail, at their last known address, the following documents: (a) the Notice of Class Action and

1 Estimated Individual Settlement Payment [Exhibit A]; (b) the Request for Exclusion Form [Exhibit
2 B]; and (c) the Objection Form [Exhibit C]. The envelope that the Notice Packet is mailed will
3 clearly state in English and Spanish that it concerns a class action and that the recipient could be
4 entitled to a settlement payment. The documents in the Notice Packet shall be sent in English and
5 Spanish. The Settlement Administrator will be responsible for translating the documents in the
6 Notice Packet from English to Spanish.

7 2. Within ten (10) days of receiving notice of a returned or undeliverable
8 Notice Packet, the Settlement Administrator will make reasonable efforts to locate Class Members
9 through skip-tracing services offered by publicly-available databases, and will re-send the Notice
10 Packets to the best available address after performing the skip-tracing. It will be conclusively
11 presumed that a Class Member's Notice Packet was received if the Notice Packet has not been
12 returned within sixty (60) days of the original mailing (or re-mailing) of the Notice Packet to the
13 Class Member.

14 3. In the event the procedures set forth herein are followed and the intended
15 recipient of a Notice Packet still does not receive the Notice Packet, the intended recipient will be a
16 Participating Class Member and will be bound by all terms of the Settlement and the Order
17 Granting Final Approval entered by the Court. The Individual Settlement Payment will be mailed
18 to that Class Member's last known address. If returned, the Settlement Administrator will use
19 reasonable efforts to locate a better address and re-mail, if possible.

20 4. Each Settlement Class member will have forty-five (45) days from the date
21 the Notice Packet is mailed (or re-mailed) to postmark a dispute to the Settlement or a Request for
22 Exclusion from the Settlement. The procedures regarding disputes or opting out of the Settlement
23 are set forth below.

24 **E. Dispute Procedures – Regarding Weeks of Employment or Termination Status**

25 1. Each Class Member will receive an Estimated Individual Settlement
26 Payment [Exhibit A], which will specify the weeks the Class Member worked during the Class
27

1 Period, as well as whether the Class Member's employment was terminated during the Class
2 Period.

3 2. Class Members will be entitled to dispute their number of weeks worked
4 and/or their termination status as reported on their Notice of Estimated Individual Settlement
5 Payment. A space will be provided on the Notice of Estimated Individual Settlement Payment for
6 Class Members to raise such disputes. For a Class Member's dispute to be considered, the Class
7 Member must fully complete the Notice of Estimated Settlement and timely return it to the
8 Settlement Administrator. To fully complete the Notice of Estimated Individual Settlement
9 Payment, the Class Member must: (a) specify their dates of employment and number of weeks
10 worked; (b) print their name, address, and last four digits of their social security number in the
11 space provided; and (c) date and sign it.

12 3. Class Members will have forty-five (45) days after the date the Notice
13 Packet was mailed (or re-mailed) by the Settlement Administrator to mail to the Settlement
14 Administrator a dispute concerning the number of weeks worked and/or the Class Member's
15 termination status, including any supporting evidence the Class Member may have. The date of the
16 postmark of the return mailing envelope shall be the exclusive means used to determine whether a
17 dispute has been timely submitted to the Settlement Administrator.

18 4. Within seven (7) days of receiving a dispute concerning a Class Member's
19 weeks worked and/or termination status, the Settlement Administrator shall review all information
20 and documents (if any) received from the Class Member in support of the Class Member's dispute,
21 and shall inform Class Counsel and Badger's counsel of its decision as to whether it accepts or
22 rejects the dispute. Class Counsel and Badger's counsel stipulate to timely and effectively
23 cooperate to resolve any disagreements regarding disputed weeks worked or termination status. In
24 the event Class Counsel and Badger's counsel are not able to reach agreement regarding a dispute,
25 either Party may request that the Court make a final decision.

26 5. Within seven (7) days of the Settlement Administrator's decision, the
27 Settlement Administrator will provide a written explanation entitled "Notice of Disputed Weeks
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1 Worked or Termination Status”) to the Class Member who disputed his or her weeks worked
2 and/or termination status. The Notice Regarding Disputed Weeks Worked or Termination Status
3 (in English and Spanish) will inform the Class Member of (a) any change to his or her weeks
4 worked or termination status, and (b) the Class Member’s right to submit such dispute to the Court.
5 If the Class Member continues to dispute the weeks worked or termination status after the initial
6 termination by the Settlement Administrator, the Class Member may submit the dispute to the
7 Court within ten (10) days after the postmark date of the Notice Regarding Disputed Weeks
8 Worked or Termination Status, and the Court shall make a final determination regarding the
9 dispute.

10 6. Upon resolution of all disputes regarding weeks worked by the Class, the
11 Settlement Administrator will prepare and circulate to all counsel an updated Class List. Any
12 changes to a Class Member’s weeks worked will be reflected in the total weeks worked for the
13 entire Class on the updated Class List.

14 **F. Opt-Out Procedures – Request for Exclusion**

15 1. The Class Notice will notify all Class Members of their right to opt out of
16 the Settlement. Any Class Member (other than the Named Plaintiff) who wishes to opt out of the
17 Settlement must submit a completed Request for Exclusion Form to the Settlement Administrator
18 on or before the Exclusion Deadline. To be valid, the Request for Exclusion Form must: (a)
19 reference the name, address, and telephone number of the person requesting exclusion; (b) be dated
20 and signed by the person requesting exclusion; (c) include the last four digits of the person’s social
21 security number; and (d) be postmarked no later than the Exclusion Deadline. The date of the
22 postmark on the return mailing envelope shall be the exclusive means used to determine whether a
23 Request for Exclusion Form has been timely submitted. The Exclusion Deadline date shall be
24 forty-five (45) days after the date the Notice Packet is first mailed (or re-mailed) by the Settlement
25 Administrator to the Class Member.

26 2. Any Class Member who mails a valid and timely Request for Exclusion
27 Form will, upon receipt thereof by the Settlement Administrator, no longer be a Participating Class
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1 Member, and will receive no benefit from the Settlement, and none of his or her claims, causes of
2 action or rights will be released by virtue of the Settlement.

3 3. Failure to timely submit a completed Request for Exclusion Form will result
4 in a Class Member being conclusively deemed a Participating Class Member fully bound by the
5 terms of the Settlement.

6 4. If a Class Member submits a timely dispute concerning his or her weeks
7 worked and/or termination status as reflected in his or her Notice of Estimated Individual
8 Settlement Payment, and submits a timely Request for Exclusion Form, the Request for Exclusion
9 Form will be invalid (unless postmarked later than the date the Class Member submits his or her
10 dispute on the Notice of Estimated Individual Settlement Payment) and such Class Member will be
11 considered a Participating Class Member.

12 **G. Objection Procedures – Objections to the Settlement**

13 The Class Notice will provide that Class Members who wish to object to the Settlement
14 may mail the Settlement Administrator an Objection Form. If a Class Member chooses to remain a
15 Class Member, but desires to object to the Settlement and wants the Court to consider his or her
16 objection at the Final Approval Hearing, the Class Member may (a) complete and mail the
17 Objection Form, and/or (b) appear (in person or through an attorney) and object at the Final
18 Approval Hearing. If the Class Member chooses to object to the Settlement by submitting the
19 Objection Form, the Class Member should: (1) follow all of the instructions specified on the
20 Objection Form; and (2) mail the completed Objection Form to the Settlement Administrator so
21 that it is postmarked no later than forty-five (45) days after the Class Notice was mailed (or re-
22 mailed) to the Class Member. The address of the Settlement Administrator shall be specified on
23 the Objection Form. If the Class Member submits an Objection Form, the Class Member is not
24 required to (but may) appear in Court at the Final Approval Hearing. Any Class Member objecting
25 to the Settlement who declines to complete the Objection Form may appear and be heard at the
26 Final Approval Hearing. If a Class Member objects to the Settlement, but the Court approves the
27 Settlement, such Class Members will still be entitled to receive an Individual Settlement Payment.

1 **H. Verification of Dissemination of Notice of Class Action**

2 The Settlement Administrator will verify, in writing, that the Notice Packets have been
3 disseminated in accordance with the Court’s Order Granting Preliminary Approval, and will
4 provide such verification to Class Counsel and Badger’s counsel no later than thirty (30) days prior
5 to the date of the Final Approval Hearing.

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7
8 **I. Reporting**

9 The Settlement Administrator will provide written notice to Class Counsel and Badger’s
10 counsel of all disputes regarding weeks worked or termination status, Requests for Exclusions, and
11 Objections to the Settlement that the Settlement Administrator receives, within five (5) days of
12 receiving such items.

13 **J. Not Encouraging Class Members to Opt Out**

14 No Party will directly or indirectly, through any person or entity, encourage any Class
15 Member not to participate in the Settlement.

16 **K. Final Approval Hearing**

17 On the date set forth in the Class Notice (or as continued by the Court in its discretion), a
18 Final Approval Hearing will be held before the Court in order to: (1) review the Settlement and
19 determine whether the Court should give it final approval; and (2) consider any timely objections
20 to the Settlement and all responses by the Parties to such objections. At the Final Approval
21 Hearing, the Parties will ask the Court to approve the Settlement and to enter judgment
22 accordingly.

23 **L. Listing of Individual Settlement Amounts**

24 Within twenty (20) business days after the Effective Settlement Date, the Settlement
25 Administrator will provide to Class Counsel and Badger’s counsel a Proceeds List showing the
26 Individual Settlement Payment for each Participating Class Member who will receive settlement
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1 proceeds (“Proceeds List”). The Proceeds List will include a calculation of all employer payroll
2 taxes and obligations.

3 **M. Dates and Methods of Payment of the Net Fund Value**

4 1. Badger will deposit into an interest-bearing account through the Settlement
5 Administrator the Gross Fund Value (less the \$7,500 credit that Badger will receive for the
6 collective settlement payments to 8 Class Members), as well as the total amount of Badger’s
7 payroll tax obligations, as set forth in the Proceeds List to be provided by the Settlement
8 Administrator to Badger, within ten (10) business days of the Effective Settlement Date. This date
9 shall be referred to as the “Funding Date.” Ten (10) business days after the Funding Date will be
10 known as the “Payment Date.”

11 2. On the Payment Date, the Settlement Administrator will prepare and mail a
12 settlement check to each Participating Class Member (defined as all Class Members who did not
13 validly opt out of the Settlement) in the amount of his or her Individual Settlement Payment. The
14 checks will indicate on their face that they are void if not cashed within one hundred and eighty
15 (180) days of their issuance. The checks will further indicate that by cashing the check, the Class
16 Member is agreeing to release the Released Claims. In the event a settlement check is returned to
17 the Settlement Administrator with a forwarding address, the settlement check will be forwarded by
18 the Settlement Administrator to the forwarding address. In the event a settlement check is returned
19 to the Settlement Administrator without a forwarding address or is otherwise undeliverable, the
20 Settlement Administrator will use reasonable efforts to locate an updated address and re-mail the
21 returned check, if possible. If the Settlement Administrator is unable to locate an updated address,
22 neither the Settlement Administrator, Badger, nor Class Counsel shall be required to take further
23 action to achieve delivery of the check to the Class Member. If within the 180-day period the
24 Participating Class Member contacts the Settlement Administrator, or if Class Counsel does so on
25 behalf of the Participating Class Member, the settlement check will be re-issued and mailed to the
26 address provided by the Participating Class Member (or Class Counsel on his/her behalf). Any
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1 such reissued settlement checks will indicate on their face that they are void if not cashed within
2 one hundred and eighty (180) days of their issuance.

3 3. Any amounts in the Reversionary Fund (e.g. funds from uncashed checks),
4 to the extent such Reversionary Funds do not exceed 50% of the Net Fund Value, will revert to or
5 remain Badger's property and will not be paid out as part of this settlement. Any amount of the
6 Reversionary Fund that exceeds 50% of the Net Fund Value will be distributed as follows:

- 7 a. 25% shall be distributed to the State Treasury for deposit in the Trial Court
8 Improvement and Modernization Fund.
- 9 b. 25 % shall be distributed to the State Treasury for deposit into the Equal
10 Access Fund of the judicial branch, to be distributed in accordance with
11 Sections 6216-6223 of the Business and Professions Code, except that
12 administrative costs shall not be paid to the State Bar or the Judicial Counsel
13 from this sum.
- 14 c. 50% shall be distributed to the Boys and Girls Club of Kern County which
15 provides programs and services for low income workers in the communities
16 where the Settlement Class members reside.
- 17 4. Any interest accrued will be distributed to the Settlement Class except that if
18 final approval is reversed on appeal, Badger shall promptly receive the principal and all interest
19 accrued.

20 **N. Dates and Methods of Other Payments**

21 1. On the Funding Date, Badger will pay to the Settlement Administrator the
22 Enhancement Award authorized by the Court, which amount is included in the Gross Fund Value.
23 On the Payment Date, the Settlement Administrator will pay from the Gross Fund Value the
24 Enhancement as authorized by the Court to the Class Representative. The payment will be made
25 by sending to Class Counsel a check, payable to "Todd Powell" in the amount of the Court-
26 approved Enhancement Award.

27 2. On the Funding Date, Badger will pay to the Settlement Administrator the
28 attorneys' fees and costs awarded by the Court, which amounts are included in the Gross Fund
Value. On the Payment Date, the Settlement Administrator will pay from the Gross Fund Value to
Class Counsel its Court-approved attorneys' fees and costs. The payment will be made by sending
to Class Counsel a check for the court-approved attorneys' fees and costs, payable to "Makarem &

1 Associates APLC,” unless specified otherwise by Class Counsel. Such payment is conditioned
2 upon Class Counsel providing the Settlement Administrator with a completed Form W-9.

3 **O. Deadlines**

4 If any deadline specified in the Settlement falls on a Saturday, Sunday, or State Court
5 holiday, the deadline will be automatically extended to the next regular business day. Unless
6 otherwise specified herein, all references to “days” shall mean calendar days.

7 **VI. ENFORCEMENT AND CONTINUING JURISDICTION OF THE COURT**

8 Pursuant to California Rules of Court, Rules 3.769 and 3.771, the Settlement will be approved
9 by the Court and will be enforceable by the Court pursuant to California Code of Civil Procedure
10 section 664.6. Even after the Order Granting Final Approval is entered, and notwithstanding it, the
11 Court will have and retain continuing jurisdiction over the Class Action and over the Parties and
12 Class Members, to the fullest extent necessary or convenient to enforce and effectuate the terms
13 and intent of the Settlement and all matters provided for in it, and to interpret it.

14 **VII. MUTUAL, FULL COOPERATION**

15 The Parties will fully cooperate with each other to accomplish the terms of the Settlement,
16 including, but not limited to, execution of such documents and taking such other action as may be
17 reasonably necessary or convenient to implement it.

18 **VIII. NO ADMISSIONS**

19 Nothing in the Settlement will constitute or be considered an admission by or on behalf of
20 Badger, or any of the Released Parties, of any wrongdoing or liability or of the accuracy of any
21 allegation made in connection with the Class Action.

22 **IX. WITHDRAWAL, NULLIFICATION, INVALIDATION**

23 **A. Effective Date of Badger’s Obligation Under the Settlement**

24 Badger’s obligations under the Settlement will become final and effective only upon
25 occurrence of all of the following events:

- 26 1. Approval of the settlement of the PAGA Claims by the Court and the
27 LWDA;

- 1 2. Execution and filing by the Court of an Order Granting Preliminary
- 2 Approval;
- 3 3. Conditional Certification of the Class for settlement purposes only;
- 4 4. The Court conducting a Final Approval Hearing;
- 5 5. Execution and filing by the Court of an Order Granting Final Approval; and
- 6 6. Occurrence of the Effective Settlement Date.

7 In the event that any of the conditions specified in the Settlement are not satisfied, or in the
8 event that the Settlement does not obtain final approval of the Court for any reason, all matters
9 covered by the Settlement will be null and void. In such event, neither the Settlement nor any
10 negotiations leading to the Settlement will be used or construed by or against any Party as a
11 determination, admission, or concession of any issue of law or fact in the litigation, and the Parties
12 hereto do not waive, and instead expressly reserve, their respective rights regarding the prosecution
13 and defense of the litigation, including all available defenses and affirmative defenses, and
14 challenging any claim that the Class Action could be certified as a class action, as if the Settlement
15 never existed.

16 **B. Withdrawal**

17 1. Notwithstanding any other provision of this Agreement, Badger retains the
18 right, in the exercise of its sole discretion, to nullify the settlement within thirty (30) days after
19 expiration of the opt out period, if ten percent (10%) or more of Class Members opt out of this
20 settlement. All signatories and their counsel must not encourage opt-outs. Class Counsel and
21 Badger specifically agree not to solicit opt-outs, directly or indirectly, through any means.

22 2. Badger must provide notice of any such intent to withdraw from the
23 Settlement in writing to Class Counsel prior to the date set for the Final Approval Hearing. In the
24 event Badger elects to withdraw, it will not be responsible for paying any settlement amounts,
25 Enhancement Award, or attorneys' fees or costs. Badger and Class Counsel will each pay one- half
26 of any Settlement Administrator Costs incurred as of the date of the withdrawal. In the event
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1 Badger elects to withdraw pursuant to this Section, such withdrawal shall have the same effect as
2 would non-approval of the Settlement by the Court.

3 **C. Nullification**

4 If: (1) the Court should for any reason fail to enter the Order Granting Final Approval; or
5 (2) the Court's Order Granting Final Approval be reversed, then: (a) the Settlement will be
6 considered null and void; (b) neither the Settlement nor any of the related negotiations or
7 proceedings will be of any force or effect; and (c) Badger and Class Counsel will each pay one-half
8 of any Settlement Administrator Costs.

9 **D. Invalidation**

10 Invalidation of any material term of the Settlement will invalidate the Settlement in its
11 entirety unless the Parties subsequently agree in writing that the remaining provisions will remain
12 in full force and effect.

13 **E. Appeal From Order Granting Final Approval**

14 In the event of a timely appeal from the Order Granting Final Approval, the Order Granting
15 Final Approval will be stayed and the Individual Settlement Payments and any other payments
16 required hereunder by Badger will not be paid pending the completion and final resolution of the
17 appeal, and any payment thereafter will: (1) occur only if the Order Granting Final Approval is
18 upheld after all appeals; and (2) be in a manner that is provided for in the Settlement and in the
19 Order Granting Final Approval.

20 **X. GENERAL PROVISIONS**

21 **A. Entire Agreement**

22 The Settlement constitutes the entire integrated agreement between the Parties relating to
23 the Class Action, and no oral representations, warranties or inducements have been made to any
24 Party concerning the Settlement other than the representations, warranties, and covenants contained
25 and memorialized in the Settlement.

26 **B. Authorization to Act**

1 Class Counsel warrant and represent that they are authorized by the Class Representative,
2 and counsel of record for Badger warrant that they are authorized by Badger, to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to the Settlement to effectuate its
4 terms, and to execute any other documents required to effectuate the terms of the Settlement.

5 **C. Modification Only In Writing**

6 The Settlement may be amended or modified only by a written instrument signed by the
7 Parties or their successors in interest. However, Class Counsel and Badger's counsel may agree to,
8 and are hereby authorized to, amend or modify the contents of the Notice Packet, the Proposed
9 Order Granting Preliminary Approval, and/or the Proposed Order Granting Final Approval, to
10 conform to any edits requested or recommended by the Court, without further signatures of the
11 Parties.

12 **D. Binding On Successors**

13 The Settlement is binding upon, and will inure to the benefit of the Parties, as well as their
14 respective attorneys, and past, present, and future predecessors, successors, shareholders, officers,
15 directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, insurers,
16 executors, partners, parent corporations, subsidiaries, and related or affiliated entities.

17 **E. No Prior Assignments**

18 The Participating Class Members will be deemed by operation of the Order Granting Final
19 Approval to represent, covenant, and warrant that they have not directly or indirectly assigned,
20 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
21 portion of any liability, claim, demand, cause of action or rights herein released.

22 **F. Governing Law**

23 All terms of the Settlement will be governed by and interpreted according to the laws of the
24 State of California.

25 **G. Counterparts**

26 The Settlement may be executed in one or more counterparts. Signatures provided
27 electronically, by pdf or facsimile shall have the same force and effect as original "wet" signatures.

1 All executed counterparts and each of them will be deemed to be one and the same instrument.
2 Counsel for the Parties will exchange among themselves signed counterparts.

3 **H. Headings for Convenience Only**

4 The descriptive headings of any paragraphs or sections of the Settlement are inserted for
5 convenience of reference only and do not constitute a part of the Settlement.

6 **I. Construction of the Settlement**

7 The Parties agree that the terms and conditions of the Settlement are the result of arms-
8 length negotiations between the Parties and that the Settlement will not be construed in favor or
9 against an Party by reason of the extent to which any Party, or his or its counsel participated in the
10 drafting of the Settlement. The Settlement constitutes the entire agreement between the Parties.
11 Except as expressly provided herein, the Settlement has not been executed in reliance upon any
12 other oral or written representations or terms and no such extrinsic oral or written representations
13 or terms will modify, vary, or contradict the terms of the Settlement. In entering the Settlement,
14 the Parties explicitly recognize California Civil Code section 1625 and California Code of Civil
15 Procedure section 1856(a), which provide that a written agreement is to be construed according to
16 its terms and may not be varied or contradicted by extrinsic evidence. The Named Plaintiff, Class
17 Counsel and Badger and its counsel participated in the negotiation and drafting of the Settlement
18 and had available to them the advice and assistance of independent counsel. As such, neither the
19 Named Plaintiff, nor any Participating Class Member, nor Badger may claim that any ambiguity in
20 the Settlement should be construed against the other.

21 **J. Corporate Signatories**

22 Any person executing the Settlement or any related document on behalf of a corporate
23 signatory hereby warrants and promises for the benefit of the Parties that such person has been duly
24 authorized by such corporation to execute the Settlement or any related document.

25 **K. Representation by Counsel**

1 The Parties acknowledge that they have been represented by counsel throughout all
2 negotiations which preceded the execution of the Settlement and that the Settlement has been
3 executed with the consent and advice of counsel.

4 **L. Attorneys' Fees and Costs**

5 Except as otherwise provided herein, the Parties will bear responsibility for their own
6 attorneys' fees and costs incurred by them or arising out of this Class Action and will not seek
7 reimbursement thereof from any Party to the Settlement. Named Plaintiff and Class Counsel
8 covenant not to pursue claims for attorneys' fees and costs, or any Class Representative
9 Enhancement Award, for dollar amounts above those stated in the Settlement.

10 **M. Miscellaneous**

11 1. The Parties acknowledge and agree that nothing in the Settlement, nor in any
12 written communication or disclosure between or among them or their counsel, is or was intended to
13 be, nor shall any such communication or disclosure constitute or be construed or be relied upon as,
14 tax advice within the meaning of United States Treasury Circular 230 (31 CFR part 10, as
15 amended.)

16 2. The Parties may not disclose the Settlement or the terms of the Settlement to
17 any outside third party (except to the Settlement Administrator) in any manner until the date of the
18 filing of the Motion for Preliminary Approval. Thereafter and continuing, Named Plaintiff and
19 Class Counsel may not disclose the Settlement or the terms of the Settlement on the Internet, or on
20 any website (including the website of Class Counsel), blog or twitter or to any periodical or legal
21 publication, including the *San Francisco Daily Journal*, except as necessary to obtain final approval
22 of the Settlement or as ordered by the Court. Notwithstanding the foregoing, in other class action
23 court filings, Class Counsel may refer to the Class Action by case name and case number only.

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25 **IT IS SO STIPULATED AND AGREED.**

26 Dated: _____, 2017

27 _____
Todd Powell

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Dated: Sept 29, 2017

Timothy H. Reiber
Badger Daylighting Corp.
By: Timothy H. Reiber

APPROVED AS TO FORM:

Dated: _____, 2017

MAKAREM & ASSOCIATES, APLC

Gene Williams
Attorneys for Plaintiff

Dated: September 29, 2017

FOX ROTHSCHILD LLP

[Signature]
Yesenia M. Gallegos
Attorneys for Defendants