

1 Richard E. Donahoo, State Bar No. 186957  
Sarah L. Kokonas, State Bar No. 262875  
2 William E. Donahoo, State Bar No. 322020  
**DONAHOO & ASSOCIATES, PC**  
3 440 West First Street, Suite 101  
Tustin, CA 92780  
4 Telephone: (714) 953-1010  
Facsimile: (714) 953-1777  
5 Email: [rdonahoo@donahoo.com](mailto:rdonahoo@donahoo.com)  
[skokonas@donahoo.com](mailto:skokonas@donahoo.com)  
6 [wdonahoo@donahoo.com](mailto:wdonahoo@donahoo.com)

7 Attorneys for Plaintiffs and the Certified Class

8 Bruno W. Katz, State Bar No. 174876  
9 **WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**  
401 West A Street, Suite 1900  
10 San Diego, CA 92101  
(619) 321-6200  
11 (619) 321-6201  
[bruno.katz@wilsonelser.com](mailto:bruno.katz@wilsonelser.com)

12 Attorneys for BOMBARDIER MASS TRANSIT CORPORATION

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

16 DINO MINTER, BOBBY BAKER, CAESAR  
17 JIMINEZ, JAMES ADOCK, and MARK  
18 NOREM, on behalf of themselves and all  
others similarly situated, and on behalf of the  
19 general public,

20 Plaintiffs,

21 v.

22 BOMBARDIER MASS TRANSIT  
CORPORATION, NORTH COUNTY  
23 TRANSIT DISTRICT (NCTD); and DOES 1  
through 20, inclusive,

24 Defendants.

Case No. 37-2018-00059972-CU-OE-CTL  
Judge: Hon. Timothy Taylor  
Dept.: C-72

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

Complaint filed: November 28, 2018

25  
26  
27 This Joint Stipulation of Class Action and PAGA Settlement and Release of Claims  
28 (“Settlement Agreement” or “Agreement”) is made and entered into by and between Plaintiffs Dino

1 Minter, Bobby Baker, Caesar Jiminez, James Adock, and Mark Norem (“Plaintiffs”), individually  
2 and on behalf of all class members, on the one hand, and Defendant Bombardier Mass Transit  
3 Corporation now known as Alstom Mass Transit Corp, (“Defendant” or “Bombardier”), on the  
4 other hand. Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

5 **DEFINITIONS**

6 The following definitions are applicable to this Settlement Agreement, in addition to other  
7 terms defined elsewhere in the Agreement:

8 1. “Action” shall mean the lawsuit *Dino Minter, Bobby Baker, Caesar Jiminez, James*  
9 *Adock, and Mark Norem, on behalf of themselves and all others similarly situated, and on behalf of*  
10 *the general public, Plaintiffs, v. Bombardier Mass Transit Corporation, et al., Defendants, et al.,*  
11 *San Diego County Superior Court No. 37-2018-00059972-CU-OE-CTL.*

12 2. “Administrator” or “Settlement Administrator” means CPT Group, Inc. the neutral  
13 entity the Parties have agreed to appoint to administer the Settlement,  
14

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

19 4. “Aggrieved Employee” means all non-exempt individuals employed by  
20 BOMBARDIER in California who worked in execution of the “North County Transit District  
21 (NCTD) RFP 24617 Rail Operations and Maintenance” project during the PAGA Period in at least  
22 one of the 5 defined subclasses of the operative complaint (Maintenance of Way (MOW),  
23 Maintenance of Signal (MOS), Maintenance of Equipment (MOE), SANDAG Workers, and  
24 Former Employee subclasses).

25 5. “BOMBARDIER” shall mean Defendant Bombardier Mass Transit Corporation  
26 now known as Alstom Mass Transit Corp.

27 6. “Class,” “Class Members,” or “Settlement Class” shall mean all non-exempt  
28

1 individuals employed by BOMBARDIER in California who worked in execution of the “North  
2 County Transit District (NCTD) RFP 24617 Rail Operations and Maintenance” project during the  
3 period from June 16, 2016 to the date the Court grants final approval of this Settlement in at least  
4 one of the defined Subclasses (Maintenance of Way (MOW), Maintenance of Signal (MOS),  
5 Maintenance of Equipment (MOE). BOMBARDIER’S records indicate that the SETTLEMENT  
6 CLASS includes approximately 185 individuals.

7 7. “Class Counsel” shall mean the attorneys representing Plaintiffs in the Actions:  
8 Richard E. Donahoo and William E. Donahoo, of Donahoo & Associates, PC.

9 8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”  
10 shall mean the amounts awarded to Class Counsel by the Superior Court to compensate them for,  
11 respectively, their fees and expenses in connection with the Action, including the investigation,  
12 filing of the Action and all related litigation activities, this Settlement, any activity relating to  
13 objections or requests for exclusion, any activity relating to any appeal or challenge to the  
14 Judgment, and all post-Settlement compliance procedures.

15 9. “Class Data” means Class Member identifying information in Bombardier’s  
16 possession including the Class Member’s name, last-known mailing address, Social Security  
17 number, the Subclass in which the Class Member was primarily engaged (e.g. Maintenance of  
18 Signal (MOS), Maintenance of Way (MOW), Maintenance of Equipment (MOE)) and number of  
19 Class Period Workweeks and PAGA Pay Periods.

20 10. “Class Member” or “Settlement Class Member” means a member of the Class, as  
21 either a Participating Class Member or Non-Participating Class Member (including a Non-  
22 Participating Class Member who qualifies as an Aggrieved Employee).

23 11. “Class Member Address Search” shall mean the Administrator’s investigation and  
24 search for current Class Member mailing addresses using all reasonable available sources, methods  
25 and means including, but not limited to, the National Change of Address database, skip traces and  
26 direct contact by the Administrator with Class Members.  
27  
28

1           12.     “Class Notice” shall mean the Court Approved Notice Of Class Action Settlement  
2 And Hearing Date For Final Court Approval, to be mailed to the Class Members in English (with a  
3 sentence on the first page indicating that a Spanish translation is available upon request) in the  
4 form, without material variation, attached as Exhibit A and incorporated by reference into this  
5 Agreement.

6           13.     “Class Period” means the period from June 16, 2016 thru June 30, 2023.

7           14.     “Class Representative” means the named Plaintiffs in the operative complaint in the  
8 Action who were certified as Class Representatives in the Court’s order certifying the class action,  
9 namely Dino Minter, Bobby Baker, Caesar Jiminez, James Adock, and Mark Norem.

10          15.     “Class Representative Payment” shall mean the special payment of \$7,500 to be  
11 made to each of the five (5) class representatives Dino Minter, Bobby Baker, Caesar Jiminez, James  
12 Adock, and Mark Norem in their capacity as Class Representatives to compensate them for  
13 initiating the Action, performing work in support of the Action, participating in discovery, and  
14 undertaking the risk of liability for attorneys’ fees and expenses in the event that they were  
15 unsuccessful in the prosecution of the Action. The Class Representative Payment is separate and  
16 apart from the Individual Release Payment.

17          16.     “Court” means the Superior Court of California, County of San Diego.

18          17.     “Defense Counsel” shall mean the attorneys representing Defendant  
19 BOMBARDIER in the Action: Bruno W. Katz of Wilson, Elser, Moskowitz, Edelman & Dicker  
20 LLP.

21          18.     “Effective Date” shall mean the date after this Agreement has been approved by the  
22 Superior Court by entry of the Judgment, and the Judgment has become Final. The Judgment  
23 becomes “Final” as of the latest of the following occurrences: (a) if no Participating Class Member  
24 objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class  
25 Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the  
26 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms  
27 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms  
28

1 the Judgment and issues a remittitur. The Judgment becoming Final is a prerequisite to any  
2 obligation of Defendant to pay any money in connection with this Settlement.

3 19. "Employer Payroll Taxes" means federal and state tax obligations of the employer,  
4 separate and apart from employee payroll tax obligations, including employer obligations for  
5 federal payroll taxes for Federal Insurance Contribution Act (FICA), Social Security, Medicare, and  
6 Federal Unemployment Tax (FUTA); and state employer tax payments, if any, for Unemployment  
7 Insurance, Employment Training Tax, State Disability Tax, and Personal Income Tax.

8 20. "Final Approval" means the Court's order granting final approval of the Settlement.

9 21. "Final Approval Hearing" shall mean the Court's hearing on the Motion for Final  
10 Approval of the Settlement.

11 22. "Final Judgment" means the Judgment entered by the Court upon granting Final  
12 Approval of the Settlement.

13 23. "Gross Settlement Amount" shall mean the maximum settlement amount of Fourteen  
14 Million Five Hundred Thousand Dollars (\$14,500,000.00) in new money payable by Defendant as  
15 provided by this Agreement.<sup>1</sup> This represents the maximum amount payable in this Settlement  
16 payable by Defendant. The Gross Settlement Amount will be used to pay Individual Class  
17 Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment,  
18 Class Counsel Litigation Expenses Payment, Class Representative Payments, Individual Release  
19 Payments, Administration Expenses Payment and Employer Payroll Taxes.

20 24. "Individual Class Payment" means the Participating Class Member's pro rata share  
21 of the Net Settlement Amount calculated according to the number of Workweeks worked during the  
22 Class Period.

23 25. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of  
24 25% (which constitutes \$52,452.00), of the PAGA Penalties calculated according to the number of  
25 Workweeks worked during the PAGA Period.  
26

27  
28 <sup>1</sup> "New money" means money not previously paid.

1           26.     “Individual Release Payment” means the amount to be paid (\$7,500) to each of the  
2 five (5) named Plaintiffs (Dino Minter, Bobby Baker, Caesar Jiminez, James Adock, and Mark  
3 Norem) for their individual releases which are broader than the releases of the Class Members

4           27.     “Judgment” shall mean the judgment entered by the Court based upon the Final  
5 Approval of the Settlement.

6           28.     “LWDA” means the California Labor and Workforce Development Agency, the  
7 agency entitled, under Labor Code §2699, subd. (i).

8           29.     “LWDA PAGA Payment” means the 75% (which constitutes \$157,356.00) of the  
9 PAGA Penalties paid to the LWDA under Labor Code §2699, subd. (i).

10          30.     “Net Settlement Amount” shall mean the Gross Settlement Amount payable by  
11 Defendant pursuant to this Settlement, less the following amounts approved by the Court:  
12 Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Payments, Class  
13 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Individual Release Payments,  
14 Employer Payroll Taxes, and the Administration Expenses Payment. The remainder is to be paid to  
15 Participating Class Members as Individual Class Payments. The Net Settlement Amount is  
16 estimated to be as calculated as follows:  
17

	Gross Settlement Amount	\$14,500,000
	Class Counsel Fees Payment	\$4,833,333
	Class Counsel Litigation Expenses Payment	48,500
	Class Representative Payments	37,500
	Individual Release Payments	37,500
	Administration Expenses Payment	10,000
	LWDA PAGA Payment	157,356
	Individual PAGA Payments	52,452
	Pre-Net Settlement Amount	9,323,359
	Estimated Employer Payroll Taxes	311,919

1 Estimated Net Settlement Amount \$9,011,440<sup>2</sup>

2 31. "Non-Participating Class Member" means any Class Member who opts out of the  
3 Settlement by sending the Administrator a valid and timely Request for Exclusion.

4 32. "Pay Period" means any Workweek during which an Employee worked for  
5 BOMBARDIER for at least one day.

6 33. "PAGA Period" means the period from April 12, 2017 to June 30, 2023.

7 34. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

8 35. "PAGA Notice" means Plaintiffs' letter to BOMBARDIER and the LWDA  
9 providing notice pursuant to Labor Code §2699.3, subd.(a).

10 36. "PAGA Penalties" means the total amount of PAGA civil penalties (\$209,808.00) to  
11 be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees  
12 (\$52,452.00) and the 75% to LWDA (\$157,356.00) in settlement of PAGA claims.

13 37. "Participating Class Member" shall mean a Class Member who does not submit a  
14 valid and timely request for exclusion from the Settlement. Participating Class Members will not  
15 be required to submit any claim form in order to receive any payment due to them under the terms  
16 of the Settlement.

17 38. "Plaintiffs" mean Dino Minter, Bobby Baker, Caesar Jiminez, James Adock, and  
18 Mark Norem, the named plaintiffs in the Action.

19 39. "Preliminary Approval" shall mean the Court's Order Granting Preliminary  
20 Approval of the Settlement.

21 40. "Preliminary Approval Order" means the proposed Order Granting Preliminary  
22 Approval and Approval of the Settlement.

23 41. "Released Class Claims" means the claims being released as described in Paragraph  
24 92 below.  
25  
26

27 \_\_\_\_\_  
28 <sup>2</sup> The Net Settlement Amount will be calculated once the actual Employer Payroll Taxes are  
calculated and verified.

1           42.    “Released Individual Claims” means the claims being released as described in  
2 Paragraph 94 below.

3           43.    “Released PAGA Claims” means the claims being released as described in  
4 Paragraph 95 below.

5           44.    “Released Parties” means BOMBARDIER, and its past, present and/or future, direct  
6 and/or indirect, officers, directors, members, managers, employees, agents, representatives,  
7 attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries,  
8 affiliates, divisions, predecessors, successors, assigns, clients, and joint venturers.

9           45.    “Request for Exclusion” means a Class Member’s submission of a written request to  
10 be excluded from the Class Settlement signed by the Class Member.

11           46.    "Response Deadline" means 45 days after the Administrator mails Notice to Class  
12 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)  
13 Request for Exclusion from the Settlement, or (b) Object to the Settlement. Class Members to  
14 whom notice packets are resent after having been returned undeliverable to the Administrator shall  
15 have an additional 14 calendar days beyond the Response Deadline has expired.

16           47.    “Settlement” shall mean the disposition of the Action effected by this Agreement  
17 and the Judgment.

18           48.    “Subclass” or “Subclasses” is defined herein as MOW, MOS and MOE employees  
19 as all of the members of the SANDAG Workers and Former Employee subclasses are included in  
20 the one of three Subclasses MOS, MOW and MOE.

21           49.    “Subclass Allocation of the Net Settlement Amount” means the negotiated allocation  
22 of the Net Settlement Amount among the three Subclasses that cover all Class Members as follows:  
23

24	MOW-	41.35% of the Net Settlement Amount
25	MOE	6.90% of the Net Settlement Amount
26	MOS	51.75% of the Net Settlement Amount
27	TOTAL	100%



1 For Interest On All Due And Unpaid Wages, Pursuant To Labor Code § 218.6.

2 54. Defendant responded to the complaint and answered the claims and allegations.  
3 Defendant has consistently denied and continues to deny all of the material allegations. Defendant  
4 denies that it is liable for damages, interest, or penalties to Plaintiffs and the Class Members.

5 55. In connection with the Actions, Plaintiffs and Defendant propounded and responded  
6 to informal and formal discovery. Plaintiffs took depositions of BOMBARDIER's corporate  
7 designees and a former employee of NCTD. Plaintiffs and Defendant produced documents  
8 relevant to Plaintiffs' claims, all of which were reviewed, investigated, and analyzed by Class  
9 Counsel. Class Counsel obtained voluminous records from BOMBARDIER including payroll  
10 records and data, contracts and other project documents. Through public records requests and  
11 formal discovery, Plaintiffs' counsel obtained documents and records from NCTD and the  
12 Department of Industrial Relations (DIR). Class Counsel's investigation was sufficient to satisfy  
13 the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th  
14 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130  
15 ("Dunk/Kullar").  
16

17 56. On May 25, 2021, pursuant to Plaintiffs and Defendant's stipulation the Court  
18 entered an order certifying the class as All persons who are employed, or have been employed for  
19 any time since June 1, 2016 by defendant BOMBARDIER, and/or DOES, in executing the work as  
20 required under the NCTD Contract for the scope of the MOS, MOW, and MOE and including those  
21 employed executing the SANDAG Contract during this same period.

22 57. On September 20, 2022 following the foregoing discovery and exchange of  
23 information, the Parties participated in a mediation presided over by Mediator Hon. Ronald M.  
24 Sabraw (Ret.). During the mediation, the Parties had a full day of productive negotiations, but were  
25 unable to reach a settlement during that session. Plaintiffs and Defendant returned to Judge Sabraw  
26 for further mediation on November 7, 2022 and were able to engage in further negotiation under the  
27 supervision of Judge Sabraw, an experienced neutral. The Parties reached agreement in principle  
28

1 but continued to negotiate. On November 16, 2022 the Parties executed a Memorandum of  
2 Understanding setting forth the essential, material terms of the Settlement, and which contemplated  
3 the execution of this “long form” agreement. Between November 16, 2022 and March 10, 2023 the  
4 Parties negotiated the terms of this Agreement.

5         58. This Agreement represents a compromise and settlement of highly disputed claims.  
6 Nothing in this Agreement is intended or will be construed as an admission by Defendant that  
7 Plaintiffs’ claims in the Actions have merit or that it has any liability to Plaintiffs or the Class or  
8 any Class Member on those claims. This Agreement is intended to fully, finally, and forever  
9 compromise, release, resolve, discharge, and settle the released claims subject to the terms and  
10 conditions set forth in this Agreement.

11         59. Based on their own thorough, independent investigation and evaluation of this case,  
12 Class Counsel are of the opinion that the Settlement with Defendant for the consideration and on  
13 the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interest of the  
14 Settlement Class in light of all known facts and circumstances, including the risk of significant  
15 costs and delay, the risk of non-certification of the Class, the defenses asserted by Defendant, the  
16 risks of adverse determinations on the merits, and numerous potential appellate issues. Although  
17 Defendant contends it has no liability in this case, or that damages have been extinguished by  
18 restitution payments made during the Class Period, Defense Counsel share Class Counsel’s belief  
19 that the Agreement represents a fair and adequate settlement given the respective risks associated  
20 with the case. The Parties affirm that this Settlement was reached through arm’s length  
21 negotiations.

22         60. The Parties, Class Counsel and Defense Counsel represent that they are not aware of  
23 any other pending matter or action asserting claims that will be extinguished or affected by the  
24 Settlement.  
25

26  
27 ///  
28

1 Based on the foregoing Recitals, the Parties agree as follows:

2 **SETTLEMENT TERMS AND CONDITIONS**

3 61. **Certification for Settlement Purposes.** Notwithstanding the Court's prior  
4 determination of class certification, solely for the purposes of effectuating this Settlement, and  
5 subject to Court approval, the Parties hereby stipulate to the conditional certification of the  
6 Settlement Class. The Parties agree that if for any reason the Settlement is not preliminarily and  
7 finally approved, the conditional certification of the Settlement Class will be of no force or effect,  
8 does not constitute an admission by Defendant that class certification is proper, and will not be  
9 deemed admissible in this or any other proceeding, and that the Parties will litigate the issue of class  
10 certification.

11 62. The Parties mutually stipulate and agree that they will not proceed with discovery or  
12 any other procedure in the Actions except for effectuating approval of this Settlement.

13 63. **Gross Settlement Amount.** The Gross Settlement Amount is Fourteen Million Five  
14 Hundred Thousand Dollars (\$14,500,000.00) in new money (meaning money not previously paid)  
15 and is the maximum amount payable by BOMBARDIER, including to pay for Employer Payroll  
16 Taxes associated with the Wage Portions (defined below) of each of the Individual Class Payments.

17 64. **Payments to Plaintiffs and Class Counsel and Others.** Subject to the terms and  
18 conditions of this Agreement, the Settlement Administrator will make the following payments out  
19 of the Gross Settlement Amount as follows:  
20

- 21 (a) **To Dino Minter, Bobby Baker, Caesar Jiminez, James Adock, and Mark**  
22 **Norem in their capacity as Class Representatives:** In addition to their  
23 Individual Class Payment, Minter, Baker, Jiminez, Adock and Norem the  
24 will receive a Class Representative Payment of not more than Seven  
25 Thousand Five Hundred Dollars (\$7,500.00) each. BOMBARDIER will not  
26 oppose a Class Representative Payment of up to \$7,500.00 to each. The  
27 Settlement Administrator will pay the Class Representative Payment  
28

1 approved by the Superior Court out of the Gross Settlement Amount. Payroll  
2 taxes, withholdings, and deductions will not be taken from the Class  
3 Representative Payment and instead a Form 1099 will be issued with respect  
4 to that payment. Minter, Baker, Jiminez, Adock and Norem agree to assume  
5 all responsibility and liability for the payment of taxes due on the Class  
6 Representative Payment. In the event that the Court does not approve this  
7 amount, any remainder not approved shall be included in the Net Settlement  
8 Amount.

9  
10 (b) **To Plaintiffs Minter, Baker, Jiminez, Adock and Norem as settlement of**  
11 **individual claims:** In exchange for the Released Individual Claims,  
12 Plaintiffs will each receive Seven Thousand Five Hundred Dollars  
13 (\$7,500.00), which will be paid out of the Gross Settlement Amount  
14 (“Individual Release Payment”). The Individual Release Payment represents  
15 an additional payment for the broad release of claims to be released by the  
16 named Plaintiffs, including waiver of Civil Code section 1542. With respect  
17 to the Individual Release Payment, each Plaintiff shall be individually  
18 responsible for their share of applicable federal, state, and local income and  
19 payroll taxes, withholdings, and deductions, including social security and  
20 Medicare contributions. Accordingly, the Individual Release Payment of the  
21 Released Individual Claims will not be considered wages, nor reduced by  
22 deductions, and the Settlement Administrator will generate and issue to each  
23 Plaintiff a Form 1099 with respect to the Individual Release Payment of each  
24 Released Individual Claim.

25 (c) **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.33%  
26 of the Gross Settlement Amount, which is currently estimated to be Four  
27 Million Eight Hundred Thirty-three Thousand Three Hundred Thirty-three  
28

1 Dollars (\$4,833,333.00 USD) and a Class Counsel Litigation Expenses  
2 Payment of not more than Forty-eight Thousand Five Hundred Dollars  
3 (\$48,500,00. USD). BOMBARDIER will not oppose requests for these  
4 payments provided that they do not exceed these amounts. Plaintiff and/or  
5 Class Counsel will file a motion for Class Counsel Fees Payment and Class  
6 Litigation Expenses Payment no later than sixteen (16) court days prior to the  
7 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment  
8 and/or a Class Counsel Litigation Expenses Payment less than the amounts  
9 requested, the Administrator will allocate the remainder to the Net Settlement  
10 Amount. Released Parties shall have no liability to Class Counsel or any  
11 other Plaintiff's counsel arising from any claim to any portion any Class  
12 Counsel Fees Payment and/or Class Counsel Litigation Expenses Payment.  
13 The Administrator will pay the Class Counsel Fees Payment and Class  
14 Counsel Expenses Payment using one or more IRS 1099 Forms. Class  
15 Counsel assumes full responsibility and liability for taxes owed on the Class  
16 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment  
17 and holds BOMBARDIER harmless, and indemnifies BOMBARDIER, from  
18 any dispute or controversy regarding any division or sharing of any of these  
19 Payments. The Class Counsel Fees Payment amount may be structured as  
20 directed by Class Counsel to the Settlement Administrator. Withholdings  
21 and deductions will not be taken from the Class Counsel Fees and Class  
22 Counsel Litigation Expenses Payments, and one or more Forms 1099 will be  
23 issued to Class Counsel with respect to those payments.

24  
25 (d) **To the Settlement Administrator:** The Settlement Administrator will be  
26 paid from the Gross Settlement Amount its reasonable fees and expenses as  
27 approved by the Superior Court in an amount not to exceed \$10,000.00.  
28

1 (e) **To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount  
2 of Two Hundred Nine Thousand Eight Hundred Eight Dollars (\$209,808.00  
3 USD) to be paid from the Gross Settlement Amount, with 75%, One Hundred  
4 Fifty Seven Thousand Three Hundred Fifty-six Dollars (\$157,356.00 USD),  
5 allocated to the LWDA PAGA Payment and 25%, Fifty-two Thousand Four  
6 Hundred Fifty-two Dollars (\$52,452.00 USD), allocated to the Individual  
7 PAGA Payments. The Administrator will calculate each Individual PAGA  
8 Payment by (a) dividing the amount of the Aggrieved Employees' 25% share  
9 of PAGA Penalties (\$52,452.00) by the total number of PAGA Period Pay  
10 Periods worked by all Aggrieved Employees during the PAGA Period and  
11 (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay  
12 Periods. Aggrieved Employees assume full responsibility and liability for any  
13 taxes owed on their Individual PAGA Payment. If the Court approves PAGA  
14 Penalties of less than the amount requested, the Administrator will allocate  
15 the remainder to the Net Settlement Amount. The Administrator will report  
16 the Individual PAGA Payments on IRS 1099 Forms.

18 **65. Funding, Calculation of Individual Class Payments and Employer Payroll**

19 **Taxes.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will  
20 calculate Individual Class Payments to each Participating Class Member and Employer Payroll  
21 Taxes to appropriate governmental authorities, based on the calculations below. The formulas  
22 below do not constitute an admission by any party, and are intended only to provide a practical  
23 means to simplify and administer the settlement process:

- 24 (a) **Distribution of the Net Settlement Amount to the Subclasses:**  
25 Given (1) allegations in the complaint as to payment of the  
26 appropriate prevailing wage rate that creates a difference in liability  
27 and damages to the alleged Subclasses (2) different defenses  
28

1 allegedly applicable to different Subclasses, including but not limited  
2 to that a certain Subclass of work (MOE) was not traditionally being  
3 subject to prevailing wage based on history and case law, (3)  
4 reimbursements or restitution payments Defendant previously paid to  
5 certain Class Members prior to resolution to cure the claims, and (4)  
6 the different risk of litigation faced by each of the Subclasses, the  
7 Parties separately negotiated the allocation of the Net Settlement  
8 Amount between the three Subclasses that covered all of the MOW,  
9 MOE and MOS Subclasses. Based thereon, the Parties agree that the  
10 Net Settlement Amount shall be allocated into the MOW, MOE and  
11 MOS Subclasses in the Subclass Allocation of the Net Settlement  
12 Amount as follows:

13		
14	MOW	41.35% of the Net Settlement Amount
15	MOE	6.90% of the Net Settlement Amount
16	MOS	51.75% of the Net Settlement Amount
17	TOTAL	100%
18		

19 (b) **Class Data.** Not later than twenty (20) days after the Superior Court  
20 grants Preliminary Approval of the Settlement, BOMBARDIER shall  
21 provide to the Settlement Administrator on a confidential basis an  
22 electronic database, in the form of a Microsoft Excel spreadsheet, of  
23 all Class Members with the Class Data, including Class Members'  
24 names, last known addresses, and social security numbers, and  
25 Subclass the Class Member was primarily engaged in (MOW, MOE,  
26 MOS) and number of Class Period Workweeks and PAGA Pay  
27 Periods as they appear in Defendant's records. To protect Class  
28

1 Members' privacy rights, the Administrator must maintain the Class  
2 Data in confidence, use the Class Data only for purposes of this  
3 Settlement and for no other purpose, and restrict access to the Class  
4 Data to Administrator employees who need access to the Class Data  
5 to effect and perform under this Agreement. BOMBARDIER has a  
6 continuing duty to immediately notify Class Counsel if it discovers  
7 that the Class Data omitted class member identifying information and  
8 to provide corrected or updated Class Data as soon as reasonably  
9 feasible. Without any extension of the deadline by which  
10 BOMBARDIER must send the Class Data to the Administrator, the  
11 Parties and their counsel will expeditiously use best efforts, in good  
12 faith, to reconstruct or otherwise resolve any issues related to missing  
13 or omitted Class Data. That number of Class Period Workweeks shall  
14 be referred to as that Class Member's "Individual Class Period  
15 Workweeks." In determining the Individual Class Period  
16 Workweeks, Defendant will round up or down to the nearest whole  
17 number.  
18

19 (c) **Calculation of Settlement Ratio.** The Settlement Administrator shall assign  
20 to each Participating Class Member a "Settlement Ratio," which shall be a  
21 fractional number comprised of (a) that Participating Class Member's  
22 individual Class Period Workweeks in the applicable Subclass (MOW, MOE  
23 or MOS) as the numerator, and (b) the aggregate total of all Participating  
24 Class Members' individual Class Period Workweeks in that Subclass as the  
25 denominator.

26 (d) **Calculation of Individual Class Payments.** The Settlement Administrator  
27 shall assign to each Participating Class Member a "Individual Class  
28

1 Payment” which shall be calculated by multiplying that Participating Class  
2 Member’s Settlement Ratio by the Net Settlement Amount of that Subclass  
3 as allocated in the Subclass Allocation of the Net Settlement Amount. Upon  
4 calculation of the Participating Class Members’ Individual Class Payment,  
5 the Settlement Administrator shall furnish to Class Counsel and Defense  
6 Counsel a worksheet containing a list of the names of the Participating Class  
7 Members with their corresponding Individual Class Period Workweeks and  
8 Individual Class Payments.

9  
10 (e) **Allocation and Withholdings.** Twenty-five percent (25%) of each  
11 Individual Class Payment (the “Wage Portion”) is intended to settle the  
12 Participating Class Members’ claims for unpaid wages and/or premiums.  
13 With respect to the Wage Portion, each Participating Class Member shall be  
14 individually responsible for the employee’s share of applicable federal, state,  
15 and local income and payroll taxes, withholdings, and deductions, including  
16 social security and Medicare contributions. Accordingly, the Wage Portion  
17 will be reduced by applicable taxes, withholdings and deductions; and the  
18 Settlement Administrator will generate and issue to each Participating Class  
19 Member a Form W-2 with respect to the Wage Portion of each Individual  
20 Class Payment. The Administrator shall calculate and pay the Employer  
21 Payroll Taxes based on the Wage Portion from the Gross Settlement Amount.

22  
23 Seventy-five percent (75%) of each Individual Class Payment (the “Non-  
24 Wage Portion”) is intended to settle each Participating Class Member’s  
25 claims for both penalties (35% of each Individual Class Payment) and  
26 interest (40% of each Individual Class Payment). Accordingly, the Non-  
27 Wage Portion will not be reduced by payroll taxes, withholdings, and  
28

1                   deductions; and, instead, the Settlement Administrator will issue a Form  
2                   1099 to each Participating Class Member with respect to the Non-Wage  
3                   Portion.

4                   (f)   **Taxes.** The Parties agree and understand that neither Class Counsel,  
5                   Defendant nor Defense Counsel has made any representations regarding the  
6                   tax obligations or consequences, if any, related to this Settlement or to any  
7                   payment made in connection with the Settlement. The Parties agree that  
8                   Plaintiffs, Class Counsel, and each Participating Class Member is responsible  
9                   for determining the tax consequences of payments made to them pursuant to  
10                  this Settlement and for paying taxes, if any, which are determined to be owed  
11                  on such payments (including penalties and interest related thereto) by any  
12                  taxing authority, whether state, local, or federal.

13                  (g)   **Funding of Gross Settlement Amount.** BOMBARDIER shall fully fund the  
14                  Gross Settlement Amount by transmitting the funds to the Administrator no  
15                  later than thirty days (30) after the Effective Date.

16  
17                  66.   **Appointment of Settlement Administrator.** The Parties will ask the Superior  
18                  Court to appoint CPT Group, Inc., a qualified administrator, to serve as the Settlement  
19                  Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with  
20                  respect to the performance of its duties and its compensation. The Settlement Administrator's  
21                  duties will include preparing, printing, and mailing the Class Notice to all Class Members; and  
22                  using reasonable measures to contact all Class Members, including conducting a National Change  
23                  of Address search on all Class Members before mailing the Class Notice to each Class Member's  
24                  address. The Settlement Administrator's duties will also include re-mailing the Class Notice to the  
25                  Class Member's new address for those Class Members whose address has changed; providing the  
26                  Parties with weekly status reports about the delivery of Class Notice; receiving and accounting for  
27                  requests for exclusion; calculating Individual Class Payments; issuing the checks to effectuate the  
28

1 payments due under the Settlement; administering tax withholdings and payments; and otherwise  
2 administering the Settlement pursuant to this Agreement. The Settlement Administrator will have  
3 the final authority to resolve all disputes concerning the calculation of a Class Member's Individual  
4 Class Payment, subject to the terms set forth in this Agreement. The Settlement Administrator's  
5 reasonable fees and expenses, including the cost of printing and mailing the Class Notice, will be  
6 paid out of the Gross Settlement Amount, as set forth herein, subject to Court approval.

7 **PROCEDURES FOR APPROVING SETTLEMENT**

8  
9 67. **Motion for Preliminary Approval of Settlement by the Court.** Class Counsel  
10 shall prepare a motion for an order granting Preliminary Approval of the Settlement, setting a date  
11 for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary  
12 Approval"), which shall be filed by Class Counsel after approval by Defense Counsel. Any  
13 disagreement among the Parties concerning the Class Notice or other documents necessary to  
14 implement the Settlement will be referred to the Superior Court.

15 68. At the hearing on the Motion for Preliminary Approval, the Parties anticipate that  
16 they will jointly appear, support the granting of the motion, and submit an Order Granting  
17 Preliminary Approval of Settlement, Approval of Notice to Class, and Setting Hearing for Final  
18 Approval of Settlement, which Order shall be prepared by Class Counsel subject to approval by  
19 Defense Counsel.

20 69. Should the Superior Court decline to preliminarily approve all material aspects of the  
21 Settlement, the Settlement will be null and void and the Parties will have no further obligations  
22 under it.

23 70. **Notice to Class Members.** After the Superior Court enters its order granting  
24 Preliminary Approval of the Settlement, every Class Member will be provided with the Class  
25 Notice as follows:  
26  
27  
28

- 1 (a) Within twenty (20) days after the Superior Court enters its order granting  
2 Preliminary Approval of the Settlement, BOMBARDIER will provide the  
3 Class Data to the Settlement Administrator.
- 4 (b) Within fourteen (14) days after receiving the Class Data, or as soon thereafter  
5 as it is able to do so, the Settlement Administrator will mail the Class Notice  
6 to all identified Class Members via first-class U.S. mail using the mailing  
7 address information provided by BOMBARDIER, unless modified by any  
8 updated address information that the Settlement Administrator obtains in the  
9 course of administration of the Settlement.
- 10 (c) If a Class Notice is returned because of an incorrect address, the Settlement  
11 Administrator will promptly, and not later than ten (10) days from receipt of  
12 the returned notice, search for a more current address for the Class Member  
13 and re-mail the Class notice packet to the Class Member. The Settlement  
14 Administrator will use the Class Members' Data and otherwise work with  
15 Defense Counsel and Class Counsel to find a more current address. The  
16 Settlement Administrator will be responsible for taking reasonable steps,  
17 consistent with its agreed-upon job parameters, court orders, and fee, to trace  
18 the mailing address of any Class Member for whom a Class Notice is  
19 returned by the U.S. Postal Service as undeliverable. These reasonable steps  
20 shall include the tracking of all undelivered mail; performing address  
21 searches for all mail returned without a forwarding address; and promptly re-  
22 mailing to Class Members for whom new addresses are found. If the Class  
23 Notice is re-mailed, the Settlement Administrator will note for its own  
24 records and notify Defense Counsel of the date and address of each such re-  
25 mailing.  
26  
27  
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1 (d) As part of its weekly status report, the Settlement Administrator will send  
2 Defense Counsel all requests for exclusion that it receives, and the Settlement  
3 Administrator will inform Class Counsel of the number of requests for  
4 exclusion that it receives.

5 (e) Not later than fourteen (14) days prior to the Final Approval Hearing, the  
6 Settlement Administrator will serve on the Parties for filing with the Superior  
7 Court a declaration of due diligence setting forth its compliance with its  
8 obligations under this Agreement, and providing complete lists of all Class  
9 Members (if any) objecting to the Settlement and the number of all Class  
10 Members (if any) requesting exclusion from the Settlement. Prior to the  
11 Final Approval Hearing, the Settlement Administrator will supplement its  
12 declaration of due diligence if any material changes occur from the date of  
13 the filing of its prior declaration.  
14

15 71. **Requests for Exclusion from Settlement; and Objections to Settlement.** Class  
16 Members may submit requests to be excluded from the effect of the Settlement, or objections to the  
17 Settlement, pursuant to the procedures below.

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

26 73. The Administrator may not reject a Request for Exclusion as invalid because it fails  
27 to contain all the information specified in the Class Notice. The Administrator shall accept any  
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1 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the  
2 person as a Class Member and the Class Member's desire to be excluded. The Administrator's  
3 determination shall be final and not appealable or otherwise susceptible to challenge. If the  
4 Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator  
5 may demand additional proof of the Class Member's identity. The Administrator's determination of  
6 authenticity shall be final and not appealable or otherwise susceptible to challenge.

7  
8 74. Every Class Member who does not submit a timely and valid Request for Exclusion  
9 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and  
10 bound by all terms and conditions of the Settlement, including the Released Class Claims of the  
11 Participating Class Members under this Agreement, regardless whether the Participating Class  
12 Member actually receives the Class Notice or objects to the Settlement.

13 75. Every Class Member who submits a valid and timely Request for Exclusion is a  
14 Non-Participating Class Member and shall not receive an Individual Class Payment or have the  
15 right to object to the class action components of the Settlement. Because future PAGA claims are  
16 subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are  
17 Aggrieved Employees are deemed to release the PAGA claims identified of this Agreement and are  
18 eligible for an Individual PAGA Payment.

19 76. **Challenges to Calculation of Workweeks.** Each Class Member shall have 45 days  
20 after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose  
21 Class Notice is re-mailed) to challenge the number of Class Workweeks and Pay Periods (if any)  
22 allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation  
23 by communicating with the Administrator via fax, email or mail. The Administrator must  
24 encourage the challenging Class Member to submit supporting documentation. In the absence of  
25 any contrary documentation, the Administrator is entitled to presume that the Workweeks contained  
26 in the Class Notice are correct so long as they are consistent with the Class Data. The  
27 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay  
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1 Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator  
2 shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to  
3 Defense Counsel and Class Counsel and the Administrator's determination the challenges.

4       **77. Objections to Settlement.** Only Participating Class Members may object to the  
5 class action components of the Settlement and/or this Agreement, including contesting the fairness  
6 of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel  
7 Litigation Expenses Payment and/or Class Representative Payment.

8       **78.** Participating Class Members may send written objections to the Administrator, by  
9 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an  
10 attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A  
11 Participating Class Member who elects to send a written objection to the Administrator must do so  
12 not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14  
13 days for Class Members whose Class Notice was re-mailed).

14       **79.** Non-Participating Class Members have no right to object to any of the class action  
15 components of the Settlement.

16       **80. Report.** Not later than fourteen (14) days after the exclusion/objection deadline, the  
17 Settlement Administrator will provide the Parties with a complete and accurate list of all  
18 Participating Class Members and all Class Members who objected to the settlement.

19       **81. No Solicitation of Objection or Exclusion.** Neither the Parties, nor their respective  
20 counsel, will directly or indirectly solicit or otherwise encourage any Class Member to seek  
21 exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment. .

22       **82. Additional Briefing and Final Approval.**

- 23       (a) Class Counsel will prepare a motion for final approval of the Settlement and  
24 payment of the Settlement Administrator's reasonable fees and expenses and  
25 a memorandum in support of their motion, which Class Counsel will file with  
26 the Superior Court after obtaining approval from Defense Counsel; and  
27  
28

1 Plaintiffs and Class Counsel will serve on Defendant and file with the  
2 Superior Court a motion for award of the Class Representative Payment, the  
3 Class Counsel Fees Payment, and the Class Counsel Litigation Expenses  
4 Payment pursuant to this Settlement, and memoranda in support of their  
5 motion.

6 (b) Before the Final Approval Hearing, the Parties shall be entitled to file and  
7 serve a response to any Class Member's objection to the Settlement and/or  
8 reply in support of their motion for final approval of the Settlement, and  
9 payment of the Settlement Administrator's reasonable fees and expenses to  
10 the extent that any opposition to the motion is filed; and Plaintiffs and Class  
11 Counsel may file a reply in support of their motion for the Class  
12 Representative Payment, the Class Counsel Fees Payment, and the Class  
13 Counsel Litigation Expenses Payment.

14 (c) If the Superior Court ultimately does not grant final approval of the  
15 Settlement or grants final approval conditioned on any material change to the  
16 Settlement, then Plaintiffs and Defendant will each have the unilateral right  
17 to void the Settlement in its entirety; if that occurs, the Parties will have no  
18 further obligations under the Agreement, including any obligation by  
19 Defendant to pay the Gross Settlement Amount or any amounts that  
20 otherwise would have been payable under this Agreement, except that  
21 Defendant on the one hand, and Plaintiffs on the other hand, will jointly and  
22 equally pay the Settlement Administrator's reasonable fees and expenses  
23 incurred as of the date that the Party exercises the right to void the Settlement  
24 under this paragraph. The Court's refusal to approve the release language  
25 will not be considered a material change to this Agreement, and the Parties  
26 agree to continue to be bound by the Agreement in that event, but will meet  
27  
28

1 and confer to resolve any necessary language of the release and to amend this  
2 agreement as necessary.

3 (d) Upon final approval of the Settlement by the Superior Court at or after the  
4 Final Approval Hearing, the Parties will present for the Superior Court's  
5 approval and entry a Proposed Final Order and Judgment, to be prepared by  
6 Class Counsel and subject to approval by Defense Counsel. The Final Order  
7 and Judgment shall permanently bar all Class Members (other than those  
8 who have submitted timely and valid requests to be excluded from the Action  
9 as provided in this Agreement) from prosecuting against Defendant and  
10 Releasees any of the Released Claims.

11 (e) After entry of the Judgment, the Superior Court will have continuing  
12 jurisdiction over the Action and the Settlement solely for purposes of (i)  
13 enforcing this Agreement, (ii) addressing settlement administration matters,  
14 and (iii) addressing such post-Judgment matters as may be appropriate under  
15 court rules or applicable law.  
16

17 **83. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the  
18 terms and conditions of this Agreement, Plaintiffs; Class Members (including those who have  
19 submitted timely and valid requests to be excluded from the Action) who did not submit a valid and  
20 timely objection to the Settlement; and Defendant, and their respective counsel hereby waive any  
21 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and  
22 appellate proceeding, such as a motion to vacate judgment, a motion for new trial, any  
23 extraordinary writ, and any appeal, and the Judgment therefore will become nonappealable at the  
24 time it is entered. The waiver of appeal does not include any waiver of the right to oppose any  
25 appeal, appellate proceedings or post-judgment proceedings. If an appeal is taken from the  
26 Judgment, the time for consummation of the Settlement (including making any payments under the  
27 Settlement) will be suspended until such time as the appeal is fully and finally resolved and the  
28

1 Judgment, consistent with the terms of this Agreement, becomes Final.

2       **84. Vacating, Reversal, or Material Modification of Judgment on Appeal or**  
3 **Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other  
4 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the  
5 Judgment such that there is a material modification to the Settlement, and that court's decision is  
6 not completely reversed and the Judgment is not fully affirmed on review by a higher court, then  
7 Plaintiffs and Defendant will each have the unilateral right to void the Settlement, which the Party  
8 must do by giving written notice to the other Parties, the reviewing court, and the Superior Court,  
9 not later than fourteen (14) days after the reviewing court's decision vacating, reversing, or  
10 materially modifying the Judgment becomes final. The Party exercising its right to unilaterally  
11 void the Settlement pursuant to this provision agrees to pay any fees owing to the Settlement  
12 Administrator for services rendered. A vacation, reversal, or modification of the Superior Court's  
13 award of the Class Representative Payment or the Class Counsel Fees Payment and/or Class  
14 Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material  
15 modification of the Judgment within the meaning of this paragraph, and shall not render the  
16 Settlement voidable.

17  
18       **85. Establishment of Settlement Account.** The Settlement Administrator shall  
19 establish a Settlement Account for the purpose of distributing all payments defined in this  
20 Settlement Agreement. Individual Class Payments. Within thirty (30) days after the Effective Date,  
21 BOMBARDIER shall pay into the Settlement Account the Gross Settlement Amount of Fourteen  
22 Million Five Hundred Thousand Dollars (\$14,500,000.00) in new money. BOMBARDIER shall  
23 not have any obligation to pay any additional funds into the Settlement Account.

24       **86. Payments from the Gross Settlement Amount.** Within twenty (20) days after  
25 BOMBARDIER funds the Gross Settlement Amount, the Administrator will mail checks for all  
26 Individual Class Payments, Individual Release Payments, all Individual PAGA Payments, the  
27 LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment,  
28

1 the Class Counsel Litigation Expenses Payment, and the Class Representative Payment.  
2 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment  
3 and the Class Representative Payment shall not precede disbursement of Individual Class Payments  
4 and Individual PAGA Payments.

5 87. The Administrator will issue checks for the Individual Class Payments and/or  
6 Individual PAGA Payments and send them to the Participating Class Members (including those for  
7 whom Class Notice was returned undelivered) via First Class U.S. Mail, postage prepaid. The face  
8 of each check shall prominently state the date (not less than 180 days after the date of mailing)  
9 when the check will be voided. The Administrator will cancel all checks not cashed by the void  
10 date. The Administrator will send checks for Individual PAGA Payments to all Aggrieved  
11 Employees including Non-Participating Class Members who qualify as Aggrieved Employees  
12 (including those for whom Class Notice was returned undelivered). The Administrator may send  
13 Participating Class Members a single check combining the Individual Class Payment and the  
14 Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update  
15 the recipients' mailing addresses using the National Change of Address database.  
16

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

25 89. **Uncashed Individual Class Payment Checks.** For any Class Member whose  
26 Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled  
27 after the void date, the Administrator shall transmit the funds represented by such checks to the  
28

1 California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving  
2 no "unpaid residue" subject to the requirements of California Code of Civil Procedure §384, subd.  
3 (b).

4 90. The payment of Individual Class Payments and Individual PAGA Payments shall not  
5 obligate BOMBARDIER to confer any additional benefits or make any additional payments to  
6 Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

7 91. **Final Report by Settlement Administrator to Superior Court.** Within ten (10)  
8 days after the final disbursement of all funds from the Settlement Account, the Settlement  
9 Administrator will serve on the Parties for filing with the Superior Court a declaration providing a  
10 final summary report on the disbursements of all funds from the Settlement Account.

### 11 **RELEASE OF CLAIMS**

12 92. **Release by Settlement Class.** As of the date the Judgment becomes Final, Plaintiffs  
13 and each Class Member who has not been excluded from the Settlement pursuant to Paragraphs 70  
14 thru 74, without the need to manually sign a release document, in exchange for the consideration  
15 recited in this Agreement, on behalf of himself or herself and on behalf of his/her current, former,  
16 and future heirs, executors, administrators, attorneys in fact, agents, and assigns, shall and does  
17 hereby fully and finally release BOMBARDIER, and its past, present and/or future, direct and/or  
18 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,  
19 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,  
20 divisions, predecessors, successors, assigns, clients, and joint venturers, (collectively the  
21 "RELEASED PARTIES"), from all causes of action and factual or legal theories/allegations that  
22 were alleged in the operative complaints in the Action, or that could have been brought in the  
23 Action based on those same factual or legal theories/allegations, against the RELEASED PARTIES  
24 through June 30, 2023. (CLASS PERIOD)). This MOU includes, but is not limited to, claims for  
25 violation of, or recovery under, Labor Code § §201, 202, 203, 218.6, 226, 226.7, 510, 512, 558.1,  
26 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1771, 1772, 1774, 1811, 1815, 2698, 2699, 2699.5,  
27  
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1 2802; California’s Prevailing Wage Law, Labor Code § 1770, *et seq.*; the applicable IWC Wage  
2 Order; and Business & Professions Code §17200-17208; and the Labor Code Private Attorneys  
3 General Act of 2004 (“PAGA”) . This also includes, but is not limited to, the following claims for  
4 relief: (a) failure to pay wages; (b) failure to pay prevailing wages on public works; (c) failure to  
5 pay minimum wages; (d) failure to provide accurate itemized wage statements; (e) penalties  
6 pursuant to Labor Code §203; (f) breach of contract – third party beneficiary; (g) violation of  
7 Business & Professions Code §17200; (h) PAGA claims, and (i) all damages, penalties, restitution,  
8 attorneys’ fees, interest, and other amounts recoverable in connection with the above legal  
9 authorities and/or claims for relief under local, California and federal law (collectively, the  
10 “RELEASED CLAIMS”). The period of the RELEASED CLAIMS shall extend from June 16,  
11 2016 to June 30, 2023 (“CLASS PERIOD.”) The *res judicata* effect of the judgment will be the  
12 same as that of this Agreement.

13  
14 93. Plaintiffs and the Class Members may hereafter discover facts or legal arguments in  
15 addition to or different from those they now know or currently believe to be true with respect to the  
16 claims, causes of action and legal theories of recovery in the Actions which are the subject matter of  
17 the Released Claims. Regardless, the discovery of new facts or legal arguments shall in no way  
18 limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiffs and  
19 the Settlement Class shall be deemed to have, and by operation of the final judgment approved by  
20 the Court, shall have, fully, finally, and forever settled and released all of the Released Claims  
21 against the RELEASED PARTIES as defined in this Agreement.

22 94. **General Release by Plaintiffs:** As consideration for Plaintiffs’ Individual Release  
23 Payments, Plaintiffs Minter, Baker, Jiminez, Adock and Norem have agreed to release, in addition  
24 to the Settlement Class Released Claims described above, all claims, whether known or unknown,  
25 under federal, state, or local law, against Defendant and all Releasees through the date this  
26 Settlement is signed by Plaintiffs (“Plaintiffs’ Released Claims”). This includes, but is not limited  
27 to, all claims arising from or based on Plaintiffs’ employment with Defendant, or separation from  
28

1 employment with Defendant, as well as any claims attributable to: common law; contract, quasi-  
2 contract or tort; unpaid salary, compensation or benefits; the Employee Retirement Income Security  
3 Act of 1974, as amended; the Internal Revenue Code of 1986, as amended; harassment,  
4 discrimination or retaliation under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of  
5 1991, the Americans With Disabilities Act, Section 1981 of the Civil Rights Act of 1866; age  
6 discrimination under the Age Discrimination in Employment Act, as amended by the Older  
7 Workers Benefit Protection Act of 1990; the Federal Medical Leave Act; the laws of California; the  
8 California Labor, Government and/or Business and Professions Codes including but not limited to  
9 California Fair Employment and Housing Act, the California Family Rights Act, and the California  
10 Unfair Business Practices Act; the California Constitution; the California Consumer Credit  
11 Reporting Agencies Act; any federal, state, or local employment, discrimination, harassment, or  
12 retaliation law, regulation, or ordinance relating to employment or separation from employment.

13 This general release also includes the Released Claims as set forth in Paragraph 55 above. This  
14 includes a waiver of Plaintiffs' right to appeal any and all rulings by the Court in this case and  
15 claims that Plaintiffs know about and claims that Plaintiffs may not know about. Plaintiffs  
16 understand that this release includes unknown claims and that they are, as a result, waiving all  
17 rights and benefits afforded by §1542 of the California Civil Code, which provides:

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

22 Specifically excluded from Plaintiffs' Released Claims are any claims that cannot be released as a  
23 matter of law, such as claims for workers' compensation benefits or unemployment benefits.

24 **95. Release by Non-Participating Class Members Who Are Aggrieved Employees.**

25 All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on  
26 behalf of themselves and their respective former and present representatives, agents, attorneys,  
27 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA  
28 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts

1 stated in the operative complaint, the PAGA Notice and ascertained in the course of the Action,  
2 including, (a) failure to pay wages; (b) failure to pay prevailing wages on public works; (c) failure  
3 to pay minimum wages and (d) failure to provide accurate itemized wage statements.

4 **MISCELLANEOUS TERMS**

5 96. **Amended Judgment.** If any amended judgment is required under Code of Civil  
6 Procedure §384, the Parties will work together in good faith to jointly submit and a proposed  
7 amended judgment.

8 97. **No Effect on Other Benefits.** The Individual Class Payments will not result in any  
9 additional employee benefit payments (such as 401(k), vacation, or bonus) and shall not have any  
10 effect on the eligibility for, or calculation of, any employee benefit. Plaintiffs and Class Members  
11 will be deemed to have waived all such claims, whether known or unknown by them, as part of  
12 their release of claims under this Agreement.

13 98. **No Admission of Liability.** Defendant denies that it has engaged in any unlawful  
14 activity, has failed to comply with the law in any respect, or has any liability to anyone under the  
15 claims asserted in the Actions. This Agreement is entered into solely for the purpose of  
16 compromising highly disputed claims. Nothing in this Agreement is intended or will be construed  
17 as an admission of liability or wrongdoing by Defendant. This Settlement and the fact that  
18 Plaintiffs and Defendant were willing to settle the Action will have no bearing on, and will not be  
19 admissible in connection with, any litigation (other than solely in connection with the Settlement).  
20

21 99. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement,  
22 any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor  
23 any reports or accounting of those matters, will be (i) construed as, offered or admitted in evidence  
24 as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other  
25 Releasee, including, but not limited to, evidence of a presumption, concession, indication or  
26 admission by Defendant or any of the Releasees of any liability, fault, wrongdoing, omission,  
27 concession or damage; or (ii) disclosed, referred to or offered in evidence against Defendant or any  
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1 of the RELEASE PARTIES, in any further proceeding in the Actions, or any other civil, criminal,  
2 or administrative action or proceeding except for purposes of effectuating the Settlement pursuant  
3 to this Agreement.

4 100. Notwithstanding any other provision of this Agreement, any and all provisions of  
5 this Agreement may be admitted in evidence and otherwise used in any and all proceedings to  
6 enforce any or all terms of this Agreement, or in defense against any claims released or barred by  
7 this Agreement.

8 101. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties  
9 and their counsel, this Agreement will constitute the entire agreement between the Parties relating  
10 to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or  
11 inducements have been made to any Party concerning this Agreement or its exhibits other than the  
12 representations, warranties, covenants, and inducements expressly stated in this Agreement and its  
13 exhibits.

14 102. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and  
15 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate  
16 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its  
17 terms, and to execute any other documents required to effectuate the terms of this Agreement. The  
18 Parties and their counsel will cooperate with each other and use their best efforts to effect the  
19 implementation of the Settlement. In the event the Parties are unable to reach agreement on the  
20 form or content of any document needed to implement the Agreement, or on any supplemental  
21 provisions that may become necessary to effectuate the terms of this Agreement, the Parties will  
22 seek the assistance of the Superior Court, and in all cases all such documents, supplemental  
23 provisions and assistance of the court will be consistent with this Agreement.

24 103. **Modification of Agreement.** This Agreement, and any and all parts of it, may be  
25 amended, modified, changed, or waived only by an express written instrument signed by all Parties  
26 or their successors-in-interest.  
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1           104.   **Agreement Binding on Successors.** This Agreement will be binding upon, and  
2 inure to the benefit of, the successors of each of the Parties.

3           105.   **Applicable Law.** All terms and conditions of this Agreement and its exhibits will  
4 be governed by and interpreted according to the laws of the State of California, without giving  
5 effect to any conflict of law principles or choice of law principles.

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

9           107.   **Fair Settlement.** The Parties and their respective counsel believe and warrant that  
10 this Agreement reflects a fair, reasonable, and adequate settlement of the Actions and have arrived  
11 at this Agreement through arms-length negotiations, taking into account all relevant factors, current  
12 and potential.

13           108.   **Headings.** The descriptive heading of any section or paragraph of this Agreement is  
14 inserted for convenience of reference only and does not constitute a part of this Agreement.

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

18           110.   **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the  
19 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree  
20 that upon the signing of this Agreement that pursuant to CCP § 583.330 the date to bring a case to  
21 trial under CCP § 583.310 is extended for the entire period of this settlement process.

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

2 112. **Notice.** All notices, demands, or other communications given under this Agreement  
3 will be in writing and deemed to have been duly given as of the third business day after mailing by  
4 United States mail, addressed as follows:

5 *To Class Counsel:* Richard E. Donahoo and William E. Donahoo, Donahoo & Associates,  
6 PC, 440 West First Street, Suite 101, Tustin, California 92780.

7 *To Defense Counsel:* Bruno W. Katz of Wilson, Elser, Moskowitz, Edelman & Dicker LLP,  
8 401 West A Street, Suite 1900 San Diego, CA 92101.

9  
10 **PLAINTIFFS**

11 DocuSigned by:



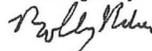
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13 Plaintiff Dino Minter

14 Dated: 3/13/2023

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17 Plaintiff Bobby Baker

18 Dated: 3/14/2023

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DocuSigned by:



20 A7F0495AB9E9447...

21 Plaintiff Caesar Jiminez

22 Dated: 3/14/2023

DocuSigned by:



23 593F82BF8584DC...

24 Plaintiff James Adcock

25 Dated: 3/13/2023

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28 Plaintiff Mark Norem

Dated: 3/14/2023

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**DEFENDANT**

DEFENDANT BOMBARDIER MASS TRANSIT CORPORATION now known as ALSTOM  
MASS TRANSIT CORP.

Sign: \_\_\_\_\_

By: \_\_\_\_\_ [print name]

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

DATED: March 13, 2023

DONAHOO & ASSOCIATES, PC

By: \_\_\_\_\_



Richard E. Donahoo  
William E. Donahoo  
Attorneys for Plaintiffs

DATED: \_\_\_\_\_, 2023

WILSON, ELSER, MOSKOWITZ, EDELMAN &  
DICKER LLP

By: \_\_\_\_\_

Bruno W. Katz  
Attorneys for Defendant BOMBARDIER MASS  
TRANSIT CORPORATION

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**DEFENDANT**

DEFENDANT BOMBARDIER MASS TRANSIT CORPORATION now known as ALSTOM  
MASS TRANSIT CORP.

Sign: 

By: Jennifer A. Callery [print name]

Its: Vice President

Dated: March 15, 2023

DATED: March 13, 2023

DONAHOO & ASSOCIATES, PC

By: \_\_\_\_\_  
Richard E. Donahoo  
William E. Donahoo  
Attorneys for Plaintiffs

DATED: March 17, 2023, 2023

WILSON, ELSER, MOSKOWITZ, EDELMAN &  
DICKER LLP

By:   
Bruno W. Katz  
Attorneys for Defendant BOMBARDIER MASS  
TRANSIT CORPORATION