

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

<p><b>LAURIN DESSEAU, individually and on behalf of all similarly situated persons,</b></p> <p style="text-align: center;"><b>Plaintiffs,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>AVIACODE, INC.,</b></p> <p style="text-align: center;"><b>Defendant.</b></p>	<p><b>Case No. 2:17-cv-01065</b></p> <p><b>STIPULATION OF SETTLEMENT AND RELEASE OF CLAIMS</b></p> <p>Judge: Honorable Bruce S. Jenkins</p>
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This Stipulation of Settlement and Release of Claims ("Settlement Agreement") is entered into by and between Plaintiff Laurin Desseaux (sometimes referred to hereinafter as "Named Plaintiff" and/or "Class Representative"), on behalf of himself individually and as representative of the individuals who joined this Action under 29 U.S.C. § 216(b) (collectively referred to as "Opt-In Plaintiffs") and/or members of the Rule 23 Settlement Class described below (collectively referred to as "Plaintiffs" or "Settlement Class Members"). (Plaintiff and Defendant are collectively referred to as the "Parties.")

**I. BACKGROUND**

1. On September 27, 2017, Brian Hazel filed a combined collective and class action complaint in the United States District Court for the District of Utah, alleging that Aviacode failed to properly pay and reimburse expenses to its medical coders classified as independent contractors ("Medical Coders") as required by the Fair Labor Standards Act ("FLSA") and the Utah Payment of Wages Act ("UPWA").

2. Aviacode filed a partial motion to dismiss the UPWA claims on the grounds that Utah law should not apply extraterritorially. After full briefing and oral argument, the Court denied the motion on January 31, 2018 without prejudice to Defendant's right to again raise its

defenses to application of Utah law to the wage and hour claims of Medical Coders located around the country. After the Court's Order, Defendant filed its answer to the Complaint.

3. On February 21, 2018, Mr. Hazel filed a motion for conditional collective action certification under the FLSA. Before the matter was fully briefed, however, the Parties agreed to conditional certification of the FLSA collective action claims for a subset of putative opt-ins. The Court granted the Parties' joint motion to approve a stipulated form of collective action notice on April 24, 2018. Shortly thereafter, notice was mailed and emailed to 457 Medical Coders whose payroll records indicated, based on mutually-agreed and reasoned assumptions, that they potentially worked overtime during the Covered Period. Forty-Seven (47) Medical Coders timely opted into the Action.

4. The Parties have engaged in substantial discovery, including:

- Interrogatories regarding the nature and background of Plaintiffs' claims and Defendant's defenses;
- Requests for production of documents, followed by frequent negotiations between counsel over the scope of documents and data to be produced. In all, the Parties have exchanged tens of thousands of pages of documents, including voluminous data regarding payroll and timekeeping practices, policies, and procedures;
- The seven-hour deposition of Mr. Hazel in Los Angeles, California;
- Two corporate representative depositions of Defendant in Salt Lake City; and
- Numerous informal productions of information and data regarding Settlement Class Members' claims and Defendant's defenses.

5. After the depositions of Mr. Hazel and the corporate representatives, the Parties discussed the possibility of resolving the case, and they ultimately filed a joint motion to stay proceedings pending mediation. On July 30, 2018, the Court held oral argument on the motion and granted it.

6. On July 29, 2018, the Parties met to informally discuss settlement, which included exchanging authority on legal issues and discussing the payroll data and potential damages.

7. On August 30, 2018, the Parties mediated the case with Mark James of Hatch, James & Dodge in Salt Lake City. Prior to the mediation, Defendant produced additional payroll and time data, as well as documents regarding its limited financial means.<sup>1</sup> The Parties negotiated for another full day, explaining their respective positions to the mediator. At the end of the mediation, the Parties executed a term sheet summarizing the terms of their settlement.

8. The Parties were not able to execute a final settlement agreement but continued to try to resolve the case.

9. On September 27, 2018, Plaintiffs filed an amended complaint with written permission of Defendant adding Plaintiff Desseaux.

10. As the Parties continued their negotiations, the Parties requested, and the Court granted, several extensions of the Order staying the proceedings.

11. On November 16, 2018, the Court held a status conference in which the Parties discussed the status of their settlement negotiations.

12. On November 21, 2018, Plaintiffs filed a motion to substitute Plaintiff Desseaux as Class Representative. They also filed a joint motion to stay proceedings pending a second

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<sup>1</sup> Plaintiffs engaged an independent accountant to review and analyze Defendant's financial records and agree they demonstrate that Defendant does not appear to be able to withstand an obligation to pay, in a lump sum, the potential damages or even settlement demands of Plaintiffs, and that such an obligation could threaten Defendant's continued viability.

mediation scheduled with Mr. James on January 17, 2019. On July 30, 2018, the Court granted both motions.

13. Just a few days before they were to conduct the second mediation, the Parties reached an agreement in principle to resolve this matter in full.

14. On January 23, 2019, the Parties filed a joint status report advising the Court of the Parties' successful mediation and of their plan to submit their settlement for the Court's approval no later than February 7, 2019.

15. For purposes of settlement only, Defendant stipulated to the certification of an opt-out class pursuant to Rule 23 of the Federal Rules of Civil Procedure for the state law claims (the "Rule 23 Class"). The Rule 23 Class, together with the 47 Opt-In Plaintiffs described above, are referred to herein as the "Settlement Class Members."

16. The Parties have conducted a thorough investigation of the claims being released by this settlement, including reviewing and analyzing the pay data, disputed legal issues and financial information provided by Defendant.

17. Based on each Party's independent investigation and evaluation, and the input from the Mediator during the first mediation, the Parties believe that settlement on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of delay, collectability of any potential judgment, allegations asserted by Plaintiffs, and defenses asserted by Defendant.

18. By entering into the Settlement Agreement, Defendant does not admit any liability or wrongdoing and expressly denies same. Nothing in the Settlement Agreement, proposals exchanged by the Parties, mediation statements or positions taken during informal

negotiations or mediation, or any motions filed or Orders entered pursuant to the Settlement Agreement, is to be construed or deemed as an admission by Defendant of any liability, culpability, negligence, or wrongdoing.

19. The Parties shall ask the Court to approve the Settlement Agreement with respect to all claims settled in this Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

## **II. DEFINITIONS**

1. Action: This Action means the above-captioned litigation, filed September 27, 2017.

2. Claims: All causes of action that were or could have been asserted in the Action, including for all Opt-In members all known and unknown claims for overtime compensation, unpaid wages, and minimum wages, liquidated damages, penalties, and interest under the FLSA; and for all Settlement Class Members, all claims arising out of any state wage, minimum wage or overtime laws, and any and all derivative claims relating to unpaid wages, minimum wage, or overtime compensation and unreimbursed expenses (including all liquidated damages, penalties and interest) accrued up to and including December 27, 2017.

3. Class Counsel: Jack McInnes of McInnes Law LLC, Patrick Reavey and Kevin Koc of Reavey Law LLC, and Eric Barton of Wagstaff & Cartmell LLP.

4. Covered Period: The longer of the applicable statute of limitations periods covering FLSA or state law claims of each Settlement Class Member to December 27, 2017, when Defendant reclassified its Medical Coders from independent contractors to employees.

5. Final Approval: The date when the Court enters an order finally approving the settlement, unless an objection to the settlement is filed. If an objection to the settlement is filed, the latter of (a) the date when the time period for filing any notice of appeal expires, or

(b) if an appeal is timely filed, the date when the order approving the settlement is affirmed on appeal, or an appeal is otherwise dismissed and/or resolved, in either case with no option for further appeal.

6. First Distribution: The first monetary distribution to the Settlement Class Members under this Settlement Agreement, scheduled for thirty (30) days after the Court grants Final Approval of the Settlement Agreement.

7. FLSA: The Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

8. Gross Settlement Amount: The total monetary consideration to be paid by Defendant under this Settlement Agreement, *i.e.*, \$1,525,000.00.

9. Mediator: Mark James of Hatch, James & Dodge in Salt Lake City.

10. Medical Coders: Aviacode medical coders classified by Aviacode as independent contractors.

11. Named Plaintiff/Class Representative: Laurin Desseaux.

12. Net Settlement Amount: The sum of the Gross Settlement Amount remaining after subtracting the amount of Class Counsel attorneys' fees, litigation expenses, settlement administrative costs, and Service Awards to the Class Representative and Mr. Hazel.

13. Notice of Settlement: The notice to be mailed to Settlement Class Members disclosing the existence of this settlement, the formula and plan for allocation of the Net Settlement Amount, and instructions on how to respond if the Settlement Class Member wishes to object to the settlement, opt out from the settlement, or otherwise respond.

14. Notice Response Deadline: The deadline for Settlement Class Members to respond to the Notice, whether by filing objections to the settlement or a Request for Exclusion. The Notice Response Deadline is sixty (60) days after the mailing of the Notices of Settlement.

15. Opt-In Plaintiffs: The 47 opt-in plaintiffs who submitted a written consent/opt-in form to Class Counsel before the parties' stipulation to conditional collective action certification and/or in response to the notice of conditional certification that was mailed and emailed, as described above.

16. Opt-Outs: Settlement Class Members who timely request exclusion from this settlement pursuant to the terms of the Settlement Agreement.

17. Released Entities: Aviacode, Inc. and any of its predecessors and successors and, in their capacities as such, all of its present, past, and future directors, officers, employees, representatives, investors, stockholders, attorneys, insurers, reinsurers, agents and assigns, as well as all of these entities' affiliates, parent or controlling corporations, partners, divisions, and subsidiaries.

18. Request for Exclusion: The form to be completed and returned by Settlement Class Members in order to opt out of the settlement.

19. Second Distribution: The second and final monetary distribution to the Settlement Class Members under this Settlement Agreement, scheduled for September 30, 2020, assuming the settlement has received Final Approval.

20. Service Awards: Subject to Court approval, monetary amounts provided to Named Plaintiff/Class Representative and Mr. Hazel, exclusive of any amount allocated to them as Settlement Class Members, in recognition of litigation efforts on behalf of the Settlement Class Members.

21. Settlement Administration Fund: The fund set up by the Settlement Administrator out of the Gross Settlement Amount in order to administer the settlement, to update and/or correct any errors relating to the allocations as agreed to by the Parties, to include

individuals who were not identified as potential Settlement Class Members but have a good faith claim for participation, or for any other reasonable purpose necessary to effectuate this Settlement Agreement.

22. Settlement Administrator: Subject to Court approval, Simpluris, Inc., jointly appointed by the Parties as the administrator of this settlement.

23. Settlement Agreement: The present stipulation of settlement and release of claims, as fully executed by counsel and the Parties.

24. Settlement Class Members: All Opt-In Plaintiffs and the members of the Rule 23 Class who do not timely opt out of this settlement.

25. Rule 23 Settlement Class: The Rule 23 Class concerning the Utah state law claims.

26. UPWA: The Utah Payment of Wages Act.

### **III. CONDITIONS PRECEDENT**

This Settlement Agreement will only become final and effective upon the occurrence of all of the following conditions precedent:

1. The Court entering an Order granting preliminary approval of the settlement and certification of the Rule 23 Class for the purposes of settlement; and

2. The Court entering orders granting Final Approval pursuant to Rule 23 and approving the settlement of the FLSA claims as the product of a *bona fide* dispute.

The Parties acknowledge and agree that if the Court does not approve any aspect of this Settlement Agreement, they will work in good faith to amend it to address the Court's objections. If these objections cannot be resolved so as to achieve Court approval, this Settlement Agreement shall be deemed void *ab initio*.



#### IV. RULE 23 CERTIFICATION

1. For settlement purposes only, the Parties stipulate to the Rule 23 Class as follows: The Court shall grant class certification for settlement purposes under Rule 23 to all Medical Coders who provided coding services to Defendant during the Covered Period, a group calculated based on Defendant's pay records as 1,087 Medical Coders.

2. The Parties stipulate that the Opt-In Plaintiffs and the Rule 23 Class shall become and be referenced herein as "Settlement Class Members."

3. The Parties also stipulate that Named Plaintiff Desseaux shall be appointed as Class Representative and that Jack McInnes of McInnes Law LLC, Pat Reavey and Kevin Koc of Reavey Law LLC, and Eric Barton of Wagstaff & Cartmell LLP shall be appointed as Class Counsel for the Rule 23 Class (and shall continue as Counsel for the Opt-In Plaintiffs).

4. Notwithstanding the foregoing, the Parties' stipulation to request certification of the Rule 23 Class is contingent upon the Court's final approval of this Settlement Agreement and is made for settlement purposes only. The Parties further stipulate that nothing herein constitutes an admission by Defendant that class certification is proper under the standard applied to contested certification motions.

5. If the settlement is not approved by the Court or does not receive Final Approval for any other reason, this Settlement Agreement will be of no force or effect; Defendant will retain the right to object to the final certification of FLSA collective action, to move to decertify the FLSA collective action, and to oppose any certification of the Rule 23 Class; and this Settlement Agreement will not be admissible in this or any other proceeding as evidence that (a) a class or collective should be certified as Plaintiffs propose, or (b) Defendant is liable to Plaintiffs or Settlement Class Members as alleged by Plaintiffs.

## V. SETTLEMENT CONSIDERATION

1. Defendant agrees to pay a total amount of \$1,525,000.00 ("Gross Settlement Amount") on the schedule set forth below in consideration for:

- a. Dismissal of the Action with prejudice for all Settlement Class Members;
- b. Full and final settlement of all Claims (as described below) of Settlement Class Members during the Covered Period, including all employer-side taxes due thereon;
- c. Attorneys' fees and litigation expenses associated with this Action, including the representation of the Settlement Class Members;
- d. A contingency/settlement administration fund to be used by the Settlement Administrator to effectuate the purposes of the settlement, including covering the costs related to administering the settlement;
- e. Service Awards to Named Plaintiff/Class Representative and Mr. Hazel.

2. The Gross Settlement Amount shall be paid on the following schedule into an escrow account created by the Settlement Administrator:

- a. No later than June 15, 2019, the sum of \$350,000.00;
- b. No later than December 15, 2019, the sum of \$425,000.00;
- c. No later than March 15, 2020, the sum of \$275,000.00;
- d. No later than June 15, 2020, the sum of \$250,000.00; and
- e. No later than September 15, 2020, the sum of \$225,000.00.

3. In no event shall Defendant have an obligation to pay any person, entity or other organization funds additional to the Gross Settlement Amount.

4. In the event that this Settlement Agreement is rescinded, terminated, voided, or the settlement of the litigation is otherwise invalidated, is not approved or is otherwise not carried out by the Court, Defendant will cease to have any obligation to pay or provide any

portion of the settlement funds yet unpaid and shall be entitled to reimbursement in full of any amounts in escrow with the Settlement Administrator minus one half the Settlement Administrator's administrative fees incurred to date in administering the settlement, including the costs of opening and maintaining the escrow account. The Parties acknowledge and agree that Plaintiffs shall bear the other half of such administrative fees if the Settlement Agreement is not approved by the Court, subject to further Order of the Court.

5. Notwithstanding the previous section of this Settlement Agreement, Defendant agrees and acknowledges that in the event it terminates this Settlement Agreement pursuant to Section XI.4, it shall cease to have any obligation to pay or provide any portion of the settlement funds yet unpaid and shall be entitled to reimbursement in full of any amounts in escrow with the Settlement Administrator, minus all the Settlement Administrator's administrative fees incurred to date in administering the settlement, including the costs of opening and maintaining the escrow account.

**VI. ALLOCATION OF THE GROSS SETTLEMENT  
AMOUNT -- ATTORNEYS' FEES, AND LITIGATION COSTS AND EXPENSES**

1. Class Counsel shall petition the Court for an award of attorneys' fees for their work in litigating this case and obtaining a settlement for the benefit of the Named Plaintiff/Class Representative and the Settlement Class Members. Class Counsel's petition will seek up to one third (33.33%) of the Gross Settlement Amount. Defendant will not oppose the petition. Any attorneys' fees awarded to Class Counsel shall be paid from the Gross Settlement Amount.

2. Class Counsel will also seek reimbursement of their out-of-pocket litigation expenses, not to exceed \$40,000. Defendant will not oppose Class Counsel's reimbursement request. Any award for out-of-pocket litigation expenses to Class Counsel shall be paid from the Gross Settlement Amount within 30 days after Final Approval of the Settlement.

3. Class Counsel agrees to accept the ruling of the Court on the award of attorneys' fees and expenses, and in consideration of such award under this Settlement Agreement, waives all claims to any other attorneys' fees and expenses in connection with this Action. The enforceability of this Settlement Agreement is thus not contingent on the final amount of attorneys' fees or litigation expenses awarded by the Court to Class Counsel.

4. Attorneys' fees awarded by the Court shall be paid to Class Counsel on the same two-part schedule as the payments from the Net Settlement Amount to the Settlement Class Members.

5. The Settlement Administrator shall issue IRS Forms 1099 to Class Counsel reflecting the awarded attorneys' fees, costs, and expenses. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payments made to it pursuant to this section of the Settlement Agreement.

6. The Parties agree that if the Court awards Class Counsel amounts less than requested by Class Counsel for attorneys' fees and expenses, the difference shall be reallocated to the Settlement Class Members on a pro rata basis as part of the Net Settlement Amount described below.

#### **VII. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT -- SETTLEMENT ADMINISTRATION**

1. The Parties agree that, subject to Court approval, Simpluris, Inc. shall serve as Settlement Administrator.

2. The Settlement Administrator shall be responsible for printing and mailing the Notices of Settlement to the Settlement Class Members as directed by the Court; creating and administering an escrow account that will hold the settlement payments; creating, administering, and mailing payments to the Named Plaintiff/Class Representative, the Settlement Class

Members, and Class Counsel; computing, reporting and paying the employer-side tax obligations applicable to all payments subject to deductions and withholdings; issuing IRS Forms W-2s and 1099s; receiving and reporting objections to the settlement submitted by Settlement Class Members; receiving and reporting any requests for exclusion (“opt-outs”) submitted by Settlement Class Members; and other tasks as the Parties may mutually agree or the Court orders.

3. The Settlement Administrator shall keep Defendant’s counsel and Class Counsel timely apprised of the performance of all its assigned responsibilities on an agreed-upon time and frequency.

4. Any and all tax reporting required by this Settlement Agreement shall be made by the Settlement Administrator. Any expenses incurred in connection with such filings shall be a cost of administration of the Settlement Agreement.

5. The Settlement Administrator shall be paid for the costs of administration of the settlement from the Gross Settlement Amount.

6. The Parties and Class Counsel each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

7. No more than seven (7) days after the deadline for Settlement Class Members to opt out of the settlement, the Settlement Administrator shall provide a declaration regarding its due diligence in mailing the Notices of Settlement, its redelivering of Notices of Settlement that were returned as undeliverable, and the number of opt-outs received, if any.

8. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the settlement.

9. The Parties agree that \$20,000.00 of the Gross Settlement Amount shall be set aside as a Settlement Administration Fund used to administer unexpected developments in the settlement process, e.g., to update and/or correct any errors relating to the monetary allocations as agreed to by the Parties, to include individuals who were not identified as potential Settlement Class Members but have a good faith claim for participation, or for any other reasonable purpose necessary to effectuate this Settlement Agreement. Any unused portion of this fund shall be reallocated to the Settlement Class Members on a pro rata basis as part of the Second Distribution.

**VIII. ALLOCATION OF THE GROSS SETTLEMENT  
AMOUNT -- SERVICE PAYMENTS FOR CLASS REPRESENTATIVES**

1. In exchange for the general release of all known and unknown claims he may have against Defendant and/or the Released Entities as set forth in a separate Release, and for his time and effort in resolving this litigation, Plaintiffs will seek, subject to Court approval, a Service Award of up to \$5,000.00 for the Named Plaintiff/Class Representative.

2. For his time and effort in bringing and prosecuting this litigation, Plaintiffs will seek, subject to Court approval, a Service Award of up to \$5,000.00 for Mr. Hazel, who shall not be required to execute a general release.

3. The Service Awards will be provided to the Named Plaintiff and Mr. Hazel exclusive of any amount allocated to them as Settlement Class Members. Class Counsel will petition the Court for approval of these Service Awards. Defendant will not oppose Plaintiffs'

application for Service Awards. Any Service Awards approved by the Court will be paid to Class Representative and Mr. Hazel within 30 days after Final Approval.

4. The Parties agree that if lesser amounts are approved by the Court, the difference between the requested amount and the approved amount shall be reallocated to Settlement Class Members on a pro rata basis.

5. The Settlement Administrator shall issue IRS Forms 1099 reflecting any Service Awards. Named Plaintiff/Class Representative and Mr. Hazel shall be solely responsible to pay any and all applicable taxes on such Service Awards.

**IX. ALLOCATION OF THE GROSS  
SETTLEMENT AMOUNT -- NET SETTLEMENT AMOUNT**

1. The sum of the Gross Settlement Amount remaining after subtracting the amount of Class Counsel attorneys' fees, litigation expenses settlement administrative costs, and Service Awards constitutes the Net Settlement Amount.

2. The Net Settlement Amount shall be distributed to the Settlement Class Members on a pro rata, proportional basis, pursuant to a formula developed by Class Counsel. The formula will determine each Settlement Class Member's pro rata share of the Net Settlement Amount based on (a) whether the Settlement Class Member opted into the FLSA case, and (b) the total number of hours reflected in each Settlement Class Member's payroll records during his or her limitations period. The resulting total will be enhanced by 10% as settlement of alleged unpaid time. The hours worked by each class member will be determined from the records of Aviacode using a consistent methodology, including a consistent method for using estimates if and when necessary. The resulting totals will be converted to a point value based on hours worked less than and in excess of forty. The Net Settlement Amount will then be distributed to each Settlement Class Member in accordance with the total number of points each Settlement Class Member has.

FLSA Class Members will receive an enhanced value for hours they worked in excess of 40 in any given week to account for potential liquidated damages under that statute. For purposes of the point system, business expenses incurred by Class Members are presumed to be proportional to the hours of work performed. Each Settlement Class Member shall receive a minimum payment of not less than \$25.

3. Based upon the claims asserted in this case, the payments made to each Settlement Class Member shall be deemed (a) one-third unpaid wages, (b) one-third expense reimbursement, and (c) one-third liquidated damages, penalties and interest.

#### **X. IMPLEMENTATION OF SETTLEMENT - NOTICE**

1. Upon execution of this Settlement Agreement, Defendant shall provide Simpluris with a list of the Settlement Class Members and their last known (1) mailing address; (2) phone number(s); and (3) personal email address.

2. The Parties will work together in good faith to prepare a Notice of Settlement that, upon preliminary approval, will be distributed to all Settlement Class Members.

3. The Notice of Settlement shall inform each Settlement Class Member of the formula for allocation of the Net Settlement Amount.

4. Within twenty-one (21) days of the Court granting preliminary settlement approval, Simpluris shall mail and email the court-approved Notice of Settlement to each Settlement Class Member at his or her last-known home address and, where available, email address.

5. No party or their agents will discourage potential Settlement Class Members from participating in this settlement or encourage them to object to or opt out of the settlement.



6. Each potential Settlement Class Member who wishes to object or opt out of the settlement will have not less than sixty (60) days from the mailing of the Notice Settlement Class Members to post-mark a response to the Notice of Settlement ("Notice Response Deadline").

#### **XI. SETTLEMENT CLASS MEMBERS' RESPONSES TO NOTICES**

1. The Notice of Settlement will provide directions to the Settlement Class Members as to their options for responding to the Notice of Settlement. These options include the following:

a. Objections to Settlement: Settlement Class Members may object to the settlement. Objections, which must be in writing, must include the following: (i) the objector's name, address, telephone number, last four (4) digits of his or her Social Security Number, and the dates of work for Defendants; (ii) the name of this case and the case number; and (iii) a statement of each objection with the reasons for same, including any legal and factual support that the objector wishes to bring to the Court's attention.

b. Objections Through Counsel: If the objection is presented through an attorney, the written objection must include: (i) the identity (name, address, last four digits of the Social Security Number, and the dates of work for Defendant) and the number of Settlement Class Members represented by the objector's counsel; (ii) the number of such represented Settlement Class Members who have opted out of the settlement; (iii) the number of such represented Settlement Class Members who have remained in the settlement and have not objected; (iv) the date the objector's counsel assumed representation of the objector(s); and (v) a list of all the names of all the cases where the objector's counsel has objected to a class action settlement in the last four (4) years.

c. Objector Discovery Allowed: Objecting Settlement Class Members must make themselves available for deposition by Class Counsel and/or Defendant's counsel in their

city of residence between the time the objection is filed and the date of the final approval hearing, and the written objection must include the date(s), time(s) and location(s) when/where the objecting Settlement Class Member will be available for deposition.

d. Waiver: Settlement Class Members who have not timely filed and served written objections in the manner specified herein shall be deemed to have waived any objections, shall be foreclosed from making any objection (whether by appeal or otherwise) to the settlement, and shall not be heard at the final approval hearing.

e. Opting Out: Any Settlement Class Member who wishes to be excluded from the settlement must complete a Request for Exclusion in a form described in the Notice of Settlement and deliver it to the Settlement Administrator no later than the Notice Response Deadline. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Those Settlement Class Members who timely request exclusion from the settlement shall be referenced herein as “Opt-Outs.”

f. Effect of Opting Out: Opt-Outs shall receive no settlement benefits under this Settlement Agreement, shall not be considered a Settlement Class Member, and shall not be bound by any release set forth in Section XIV below. The claims of Opt-Outs will be dismissed without prejudice and their statute of limitations will continue to be tolled for thirty (30) days after the date of the Final Approval of the settlement. Because no part of the Gross Settlement Amount shall revert or be retained by Defendant, the Parties agree to reallocate on a pro rata basis to the remaining Settlement Class Members the monies initially allocated to the Opt-Outs.

g. Staying In/Doing Nothing: All Settlement Class Members who do not timely request exclusion from the settlement shall be deemed a Settlement Class Member and will be bound by all the terms of the Settlement Agreement as finally approved by the Court.

2. Any Notice of Settlement that is returned as “Undeliverable” shall be the subject of a single “skip trace” search by the Settlement Administrator, which shall re-mail the Notice of Settlement to any further address that is found. If, after performing such a “skip trace” search, the Settlement Administrator is unable to locate the Settlement Class Member, Defendant shall provide the Settlement Administrator with any personally identifiable information in its possession for that individual in order to assist the Settlement Administrator to locate the individual and re-mail the Notice of Settlement to the correct address.

3. The Parties agree to use their best efforts to carry out the terms of this Settlement Agreement. At no time shall any of the Parties or their agents seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement Agreement or to request exclusion from the settlement, or to appeal from the Court’s final judgment.

4. Defendant shall have, in its sole discretion, the option to rescind this Settlement Agreement and thereby render null and void all actions taken in its furtherance, under the following circumstances: (a) if the combined distributions of the Net Settlement Amount to Settlement Class Members who elect to become Opt-Outs exceed \$250,000.00; and (b) twenty five or more putative Settlement Class Members (two and three-tenths percent (2.3%) of the putative Settlement Class Members or more) elect to become Opt-Outs.

5. Further, if the combined distributions of the Net Settlement Amount to Settlement Class Members who elect to become Opt-Outs exceed \$150,000.00 but not \$250,000.00,

Defendant is entitled to reduce its payments by \$150,000.00 dollar for dollar evenly across the four scheduled installment payments.

## **XII. DISBURSEMENTS OF THE NET SETTLEMENT AMOUNT**

1. There shall be two distributions of the settlement funds:

a. Thirty (30) Days after Final Approval: The Settlement Administrator shall issue a first payment to beneficiaries of this Settlement Agreement consisting of not more than the funds on hand when Final Approval occurs (the “First Distribution”).

b. Within 15 Days of Final Installment Payment: Assuming the settlement has by then received Final Approval, the Settlement Administrator shall issue the second payment to beneficiaries of this Settlement Agreement within fifteen (15) days after the deadline for Defendant to make its last partial payment (as set forth above) (the “Second Distribution”). The Second Distribution shall consist of each recipient’s share of the remaining settlement funds.

2. For the purposes of calculating applicable taxes, the Parties agree to the allocation of each payment hereunder pursuant to the percentages set forth in Section IX.3 above. The Settlement Administrator will issue IRS Form W-2s and 1099s in accordance with this allocation.

3. Defendant’s counsel and Class Counsel make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members are not relying on any statement or representation by Defendant’s counsel or Class Counsel in this regard. Settlement Class Members will be informed by the Settlement Administrator that they will be solely responsible for the payment of any taxes and penalties which may be owed on the payments described herein.

4. The Parties acknowledge and agree that employer-side taxes owing on any payments hereunder (*e.g.*, FICA, FUTA) shall be paid out of the Gross Settlement Amount based on calculations and allocations determined by the Settlement Administrator.

### **XIII. UNCASHED CHECKS**

1. Settlement Class Members shall have one hundred and eighty (180) days from the dates of issuance of their settlement checks in which to negotiate them (by depositing or cashing them). The Settlement Administrator will prepare a report, ninety (90) days after mailing the First Disbursement, listing checks that have not yet been negotiated (and associated Settlement Class Members). The Settlement Administrator will cooperate with Class Counsel to reissue any lost or damaged settlement checks.

2. Settlement checks from the First Distribution that have not been negotiated within the one hundred and eighty (180)-day negotiation period will be void, and their sums will be redistributed to the Settlement Class Members in the Second Distribution on a pro rata basis. The individuals who fail to negotiate these checks will be deemed to have irrevocably waived any right or claim to the First Distribution, but they will nonetheless be deemed to have released their Claims against Defendant.

3. Settlement checks from the Second Distribution that have not been negotiated within their one hundred and eighty (180)-day negotiation period will become void. The individuals who failed to negotiate these checks will be deemed to have irrevocably waived any right or claim to their Second Distribution, but they will nonetheless be deemed to have released their Claims against Defendant. The monies consisting of these non-negotiated checks, along with any other remaining funds from the Settlement Administrator's escrow account at that time, shall be paid to an agreed-upon Utah charity supporting workers' rights or other agreeable Utah

charity. The Parties will negotiate in good faith to identify the charity to be selected for such payment of leftover funds.

#### **XIV. RELEASE OF CLAIMS**

1. Settlement Class Members shall be bound by this Settlement Agreement and shall, by virtue of their participation in this settlement, be deemed to have provided the following releases. In addition, the settlement checks will include language constituting a release of claims further confirming the releases herein.

a. Opt-In Release: Each and every Opt-In member hereby knowingly and voluntarily completely releases and covenants not to sue any of the Released Entities from/for all known and unknown claims for overtime compensation, unpaid wages, and minimum wages, liquidated damages, penalties, and interest under the FLSA.

b. Rule 23 Release: Each and every Settlement Class Member hereby knowingly and voluntarily completely releases and covenants not to sue any of the Released Entities from/for all claims, known and unknown, arising out of any state wage, minimum wage or overtime laws, and any and all derivative claims relating to unpaid wages, minimum wage, or overtime compensation and unreimbursed expenses (including all liquidated damages, penalties and interest) accrued up to and including December 27, 2017.

2. The Named Plaintiff has separately executed a full, general release of all claims accrued to date.

3. Mr. Hazel is not required to execute a general release. Further, the Parties agree that the releases set forth herein do not release any claims relating to Mr. Hazel's complaint to the IRS and the IRS' potential investigation and claims resulting from the complaint.

4. The Named Plaintiff and the Settlement Class Members recognize and acknowledge that they may hereafter discover facts in addition to or different from those they

now know or believe to be true with respect to the subject matter of the Claims, but upon the final approval of this Settlement Agreement they shall be deemed to have, and by operation of the final judgment shall have, fully, finally and forever settled and released any and all of the Claims, whether know or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, regarding the subject matter of the Action.

5. Named Plaintiff/Class Representative represents and warrants that nothing which would otherwise be released herein has been assigned or transferred or purportedly assigned or transferred.

#### **XV. MUTUAL AND FULL COOPERATION**

1. The Parties agree to fully cooperate with each other in good faith to accomplish the terms of the Settlement Agreement, including, but not limited to, execution of such documents and taking such other action as may reasonably be necessary to implement the terms of the Settlement Agreement. The Parties shall use their best efforts, including reasonable efforts contemplated by the Settlement Agreement and any other reasonable efforts that may become necessary by order of the Court, or otherwise, to effectuate the Settlement Agreement and the terms set forth herein.

2. As soon as practicable after execution of the Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant's Counsel, take all necessary steps to secure the Court's approval of the Settlement Agreement and for Defendant to make all settlement payments as set forth herein.

3. The Parties agree to take all necessary steps to defend the Settlement Agreement in the event that any objector challenges it or appeals the Court's final approval.

## XVI. MISCELLANEOUS

1. Authority to Sign: The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

2. Named Plaintiff's/Class Representative's Waiver of Right to Be Excluded or Object: Named Plaintiff/Class Representative agrees to sign this Settlement Agreement and, by signing it is thereby bound by the terms herein. For good and valuable consideration, Named Plaintiff/Class Representative further agrees that they will not encourage any Settlement Class Member related to them by blood, marriage, engagement to be married, or co-habitation, to request to be excluded from the settlement or object to any of the terms of this Settlement Agreement.

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

To Class Counsel:

Jack McInnes  
McInnes Law LLC  
1900 West 75<sup>th</sup> Street, Suite 120  
Prairie Village, KS 66208  
Telephone: (913) 220-2488  
Facsimile: (913) 273-1671  
jack@mcinnes-law.com

To Defendant:

Andrew W. Bagley  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595  
Telephone: 202.624.2500  
Facsimile: 202.628.5116  
abagley@crowell.com



4. Construction: The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, and arms-length negotiations among the Parties, and that the Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his, her or its counsel participated in drafting of the Settlement Agreement.

5. Headers: The headers in this Settlement Agreement are for the convenience of the reader only and do not constitute part of the substance of this Agreement and are of no legal effect.

6. Named Plaintiff/Class Representative Signatories: The Notices of Settlement will advise all potential Settlement Class Members of the binding nature of the release, and that the release will have the same force and effect as if the Settlement Agreement were executed by each Settlement Class Member.

7. Jurisdiction of the Court: The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of this Settlement Agreement.

8. Counterparts: The Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

9. Entire Agreement of the Parties: This Settlement Agreement sets forth the entire agreement between the Parties hereto and supersedes all prior agreements or understandings, written or oral, between the Parties.

10. Amendment or Modification: This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest.

11. Binding on Successors and Assigns: This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto.

12. Governing Law: This Settlement Agreement shall be governed and interpreted according to the laws of the State of Utah without regard to conflict of laws principles.

13. No Admission of Liability: Defendant denies any liability to the Named Plaintiff/Class Representative and/or the Settlement Class Members.

*[Remainder of this page intentionally left blank]*


IN WITNESS WHEREOF, the undersigned have duly executed this Settlement Agreement:

**Class Representative Plaintiff:**

In addition to my agreement to the foregoing paragraphs, I, the undersigned, Laurin Desso, hereby verify that I am the same individual identified herein above and elsewhere in the legal pleadings in this case as Laurin Desseaux. At various times in my life, I have been known under the spelling of either name, however, my legal name is Laurin Desso.

\_\_\_\_\_  
**Laurin Desso** Date  
Class Representative Plaintiff

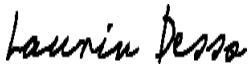
**Defendant Aviacode, Inc.:**

 \_\_\_\_\_  
Company Representative Date  
2/8/19

IN WITNESS WHEREOF, the undersigned have duly executed this Settlement Agreement:

**Class Representative Plaintiff:**

In addition to my agreement to the foregoing paragraphs, I, the undersigned, Laurin Desso, hereby verify that I am the same individual identified herein above and elsewhere in the legal pleadings in this case as Laurin Desseaux. At various times in my life, I have been known under the spelling of either name, however, my legal name is Laurin Desso.

 02/08/2019  
\_\_\_\_\_  
**Laurin Desso** Date  
Class Representative Plaintiff

**Defendant Aviacode, Inc.:**

\_\_\_\_\_  
Company Representative Date