

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
3 FRESNO DIVISION

4 BRANDON IMBER, individually and on
5 behalf of all others similarly situated,
6 *Plaintiff,*

7 v.

8 BRUCE LACKEY, PAM LACKEY,
9 LACKEY FAMILY TRUST, COLE
10 SCHARTON, the ADMINISTRATIVE
11 COMMITTEE OF THE PEOPLE
12 BUSINESS EMPLOYEE STOCK
13 OWNERSHIP PLAN, MIGUEL
14 PAREDES, RICK ROUSH, DEL
15 THACKER, RICHARD DEYOUNG, and
16 RITCHIE TRUCKING SERVICE
17 HOLDINGS, INC.,
18 *Defendants,*

19 and

20 PEOPLE BUSINESS EMPLOYEE
21 STOCK OWNERSHIP PLAN,
22 *Nominal Defendant*
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Case No. 1:22-cv-00004-KES-HBK

**CLASS ACTION SETTLEMENT
AGREEMENT**

TABLE OF CONTENTS

RECITALS..... 1

I. DEFINITIONS 3

II. CLASS CERTIFICATION11

III. CLASS NOTICE12

IV. SETTLEMENT FUND15

V. DISTRIBUTIONS FROM THE SETTLEMENT FUNDS.....20

VI. PLAN OF ALLOCATION28

VII. SETTLEMENT ADMINISTRATION30

VIII.ATTORNEYS' FEES, EXPENSES/COSTS & SERVICE AWARD32

IX. USE OF SETTLEMENT AGREEMENT34

X. APPROVAL OF SETTLEMENT35

XI. CONDITIONS OF SETTLEMENT.....37

XII. INDEPENDENT FIDUCIARY39

XIII.ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT40

XIV. RELEASES.....40

XV. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION43

XVI. RESTRICTIONS ON DEFENDANTS' CONTACT WITH CLASS MEMBERS44

XVII. MISCELLANEOUS PROVISIONS45

INTRODUCTION

Subject to approval by the United States District Court for the Eastern District of California, this Class Action Settlement Agreement is made and entered into by and among Plaintiff Brandon Imber, on behalf of the Class, and Defendants Bruce C. Lackey (individually and as co-trustee of The Lackey Family Trust defined below), Pamela L. Lackey (individually and as co-trustee of The Lackey Family Trust defined below), Lackey Family Trust, Cole Scharton, the Administrative Committee of the People Business Employee Stock Ownership Plan, Miguel Paredes, Rick Roush, Del Thacker, Richard DeYoung, and Ritchie Trucking Service Holdings, Inc., on the terms and conditions below. All capitalized terms will have the meaning ascribed in Section I of this Agreement.

RECITALS

A. Plaintiff Brandon Imber filed the Complaint in this Action on December 31, 2021, in the United States District Court for the Eastern District of California. ECF No. 1.

B. On January 3, 2022, the Court issued the Order Setting Mandatory Scheduling Conference for September 15, 2022. ECF No. 5.

C. Plaintiff and Defendant People Business Employee Stock Ownership Plan (the “ESOP”) stipulated to excuse the ESOP, which is named as a Nominal Defendant, from responding to the Complaint. ECF No. 30.

D. Defendant Miguel Paredes moved to dismiss Counts I, III, IV, VII and VIII on April 4, 2022, which Plaintiff opposed.

E. Defendant Lackey Family Trust moved to dismiss Counts I and II on April 4, 2022 which Plaintiff opposed.

F. Defendants Rick Roush, Del Thacker, and Richard DeYoung moved to dismiss Counts VI, VII and VIII on April 11, 2022.

1 G. Defendants Cole Scharton, the Administrative Committee of the People Business
2 Employee Stock Ownership Plan and Ritchie Trucking Service Holdings, Inc. answered the
3 Complaint on April 18, 2022. ECF No. 51.

4 H. Defendants Bruce Lackey and Pam Lackey answered the Complaint on April 18,
5 2022. ECF No. 54. Defendants Bruce Lackey and Pam Lackey filed their Amended Answer to
6 the Complaint on May 10, 2022. ECF No. 63.

7 I. All motions to dismiss are fully briefed and pending before the Court.

8 J. Consistent with the Limited Discovery Order (ECF No. 80), the Parties provided
9 the discovery required by that Order including the documents specified in Paragraph 4 thereof
10 that Defendants were required to provide to Plaintiff.

11 K. The Parties participated in a remote mediation session with Mr. Martin Quinn,
12 Esq. of JAMS on January 23, 2023. The parties continued settlement discussions following the
13 mediation session with Mr. Quinn.

14 L. Following the mediation session, Ritchie (as defined below), provided certain data
15 about the Plan accounts of the Class Members with identifying information excluded.

16 M. Subsequently, the Parties participated in a remote Voluntary Dispute Resolution
17 Proceeding (“VDRP”) with Rex Berry on April 2, 2024. While final agreement was not reached
18 during the initial VDRP session, the Parties participated in a further mediation session with Mr.
19 Berry on May 7, 2024. While final agreement was not reached on May 7, 2024, the Parties
20 continued discussions and negotiations and eventually reached the agreement reflected in this
21 Settlement Agreement.

22 N. The Nexus-Insured Defendants represent that Nexus Specialty provides fiduciary
23 insurance coverage for the Nexus-Insured Defendants, all of whom are alleged in the Complaint
24 to be fiduciaries of the Plan. The Nexus-Insured Defendants represent, to the best of their
25 knowledge and belief, including based upon information from Nexus Specialty, that the amount
26 paid as the Cash Settlement Amount of \$485,000.00 plus the expected amount to be paid to the
27

Independent Fiduciary (\$15,000.00) will exhaust the amount of remaining insurance policy limits provided by Nexus Specialty.

O. Defendants represent that the document entitled “The People Business Employee Stock Ownership Plan” Originally Effective As Of January 1, 2018 bearing bates number Paredes 000173-298 is the written instrument of the Plan within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a) and has not been amended since it was adopted.

P. Defendants represent that there is no separate Trust agreement other than what is contained in the 2018 Plan Document.

Q. Defendants represent that Ritchie is the holder of the ESOP Note (defined below).

R. The Parties desire to promptly and fully resolve and settle with finality all of the claims on behalf of the Class identified below in this Settlement Agreement on the terms set forth herein and in the Supplemental Confidential Agreement and subject to the approval of the Court.

I. DEFINITIONS

As used in this Settlement Agreement, the following terms have the following meanings, unless a section or subsection of this Settlement Agreement specifically provides otherwise.

Capitalized terms used in this Settlement Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Settlement Agreement, if found therein, or in the 2018 Plan Document, if found therein, or in ERISA.

A. “2018 Plan Document” means “The People Business Employee Stock Ownership Plan, Originally Effective As Of January 1, 2018,” bearing bates number Paredes 000173-298.

B. “2018 Transaction” means the transaction on December 31, 2018 by which the Lackeys as Co-Trustees of the Lackey Trust sold 2,000,000 shares of common stock of Ritchie to the Plan for \$19,543,000.00, as further set forth in the Stock Purchase Agreement and other documents related to the 2018 Transaction.

C. “Action” means the lawsuit entitled *Imber v. Lackey, et al.*, docketed as Civil Action No. 1:22-cv-00004-KES-HBK in the United States District Court for the Eastern District of California.

D. “CAFA” means the Class Action Fairness Act.

E. “CAFA Notice” means the notice issued pursuant to CAFA.

F. “Cash Settlement Amount” means \$485,000.00 dollars paid by or on behalf of the Nexus-Insured Defendants, other than the Plan.

G. “Cash Settlement Fund” means the Cash Settlement Amount minus any Court-approved deductions and expenses, plus any earnings and interest thereon.

H. “Class” means all participants in the ESOP from December 31, 2018, or any time thereafter until December 31, 2024 (unless the participant terminated without vesting) and those participants’ beneficiaries other than the Excluded Persons.

I. “Class Claims” means Counts I-IV and VI-VIII in the Complaint (i.e. all Counts in the Complaint other than Count V).

J. “Class Counsel” means Lead Class Counsel R. Joseph Barton of The Barton Firm LLP.

K. “Class Member” means an individual who is a member of the Class.

L. “Class Notice” means the form of notice provided to the Class Members that complies with the requirements of Section III.2 in this Agreement, Fed. R. Civ. P. Rule 23, and as approved by the Court.

M. “Class Notice Packet” means the Class Notice and any other documentation approved or directed by the Court.

N. “Class Representative” means Plaintiff Brandon Imber, subject to his appointment by the Court.

O. “Complaint” means the Complaint filed in this Action on December 31, 2021.

1 P. “Credit Agreement” means the document entitled “Credit Agreement” that was
2 entered into by Ritchie, the Lackeys as Co-Trustees of the Lackey Trust and Miguel Paredes as
3 the Trustee of the Trust dated December 31, 2018 (produced by Defendants with bates numbers
4 LFT 000487-000550 and Paredes 00487-550).

5 Q. “Court” means the United States District Court for the Eastern District of
6 California.

7 R. “Defendants” mean Bruce Lackey, Pam Lackey, Lackey Family Trust, (including
8 Bruce C. Lackey and Pamela L. Lackey as Co-Trustees of The Bruce Lackey and Pamela Lackey
9 Family Trust dated 3/31/87, as amended), Cole Scharton, the Administrative Committee of the
10 People Business Employee Stock Ownership Plan, Miguel Paredes, Rick Roush, Del Thacker,
11 Richard DeYoung, and Ritchie Trucking Service Holdings, Inc.

12 S. “Defense Counsel” means one or more of the counsel who represents one or more
13 of the Defendants in this Action and who have entered an appearance in this Action.

14 T. “Employer Stock” means the stock of Richie.

15 U. “Employer Stock Account” means the account in the ESOP that holds Employer
16 Stock as described in 2.01(A) of the 2018 Plan Document.

17 V. “Election Distribution Packet” means any necessary forms for a Class Member to
18 elect to receive a distribution (including a rollover) from the Plan.

19 W. “Excluded Persons” means the following persons who are excluded from the
20 Class: (a) Defendants; (b) any fiduciary of the Plan; (c) the officers and directors of Ritchie
21 Trucking or of any entity in which the individual Defendants have a controlling interest; (d)
22 immediate family members of any of the foregoing excluded persons, and (e) the legal
23 representatives, successors, and assigns of any such excluded persons.

24 X. “ERISA” means the Employee Retirement Income Security Act of 1974, as
25 amended.

1 Y. “Escrow Account” means an account established by Class Counsel in the name of
2 “Ritchie Trucking Settlement Fund” into which the Cash Settlement Amount is to be paid.

3 Z. “Escrow Agent” means the bank or financial institution that will hold the Cash
4 Settlement Fund, which bank or financial institution has been agreed upon by Class Counsel and
5 Nexus Specialty.

6 AA. “ESOP Account” means the ESOP Account in the Plan described in Section
7 2.01(B) of the 2018 Plan Document.

8 BB. “ESOP Note” means the document entitled “ESOP Note” entered into by Miguel
9 Paredes as Trustee of the Trust dated December 31, 2018 and which promise to pay Ritchie
10 \$19,543,000 (produced by Defendants at bates numbers LFT 000579-000586 and Paredes
11 00579-586).

12 CC. “Expense Award” will have the meaning set forth in Section VIII.1 of this
13 Agreement.

14 DD. “Fee Award” will have the meaning set forth in Section VIII.1 of this Agreement.

15 EE. “Final Approval Motion” means the motion to be filed by Class Counsel
16 requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e)
17 and applicable case law.

18 FF. “Final Order” means the Final Approval Order and Final Judgment, substantially
19 in the form of an Order described in Section X.2 below.

20 GG. “General Account” means the General Account described in Section 2.01(C) of
21 the 2018 Plan Document.

22 HH. “Independent Fiduciary” means the person(s) or entity hired by Defendants
23 pursuant to Section XII.1 of this Agreement.

24 II. “Lackeys” mean Bruce C. Lackey and Pamela L. Lackey.

JJ. “Lackey Family Trust” or “Lackey Trust” means the Bruce and Pamela Lackey Family Trust dated 3/31/87, as amended, including Bruce C. Lackey and Pamela L. Lackey as Co-Trustees of the Bruce and Pamela Lackey Family Trust dated 3/31/87, as amended.

KK. “Net Settlement Fund” means the Net Cash Settlement Fund plus the Stock Fund.

LL. “Net Cash Settlement Fund” means the Cash Settlement Fund plus any earnings or interest minus any court approved payments, deductions, expenses, and any reserve amounts.

MM. “Nexus-Insured Defendants” means all of the Defendants except the Lackey Trust and Bruce C. Lackey and Pamela L. Lackey as Co-Trustees of the Lackey Trust.

NN. “Nominal Defendant” means the Plan.

OO. “Non-Appealable” means an order entered by the Court that is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other writ, or any other form of review, have been finally disposed of, such that the time to appeal therefrom (including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

PP. “Notes” means the ESOP Note and the Subordinated Promissory Note. The Secured NonRecourse Promissory Note will be considered as part of “Notes” only if it has not previously been cancelled

QQ. “Parties” means collectively Plaintiff and Defendants; “Party” refers to any one of them.

RR. “Plaintiff” means Brandon Imber.

SS. “Plaintiff’s Counsel” means The Barton Firm LLP (including its attorneys and staff).

1 TT. “Plan” means the People Business Employee Stock Ownership Plan, which
2 includes The People Business Employee Stock Ownership Trust, a trust created under The
3 People Business Employee Stock Ownership Plan and Trust

4 UU. “Plan Administrator” shall mean the Plan Administrator of the Plan as defined in
5 Section 3(16)(A) of ERISA.

6 VV. “Plan Account(s)” means the accounts in the Plan as described in Section 2.01 of
7 the 2018 Plan Document.

8 WW. “Plan of Allocation” means the plan for distribution of the proceeds of the
9 Settlement Fund set forth in Exhibit A attached hereto and as approved by the Court.

10 XX. “Preliminary Approval Order” means the “Order Preliminarily Approving
11 Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action,
12 substantially in the form described in Section X.1 of this Agreement.

13 YY. “Loan Modification” means the \$1.4 million reduction of the principal effective
14 January 1, 2024 applied to each of the Notes, and any corresponding modifications needed to
15 occur with respect to any related credit, loan or security and/or pledge agreements as described in
16 Section IV.B.1 of this Agreement.

17 ZZ. “Ritchie” means Ritchie Trucking Service Holdings, Inc.

18 AAA. “Secured Nonrecourse Promissory Note” means the “Secured Nonrecourse
19 Promissory Note (Seller Note)” entered into by the Trustee of the Trust, with the Lackeys as Co-
20 Trustees of the Lackey Trust, which Note is dated December 31, 2018 and with an original
21 principal amount of \$19,543,000.00 (produced by Defendants at bates stamp LFT 000444-
22 000453 and Paredes 00444-453).

23 BBB. “Seller” means the seller identified in the Stock Purchase Agreement and other
24 documents in the 2018 Transaction.

25 CCC. “Settling Parties” means Plaintiff and collectively Defendants.

1 DDD. “Service Award” means the award to be paid to the Class Representative out of
2 the Cash Settlement Fund in an amount authorized by the Court.

3 EEE. “Settled Claims” means the Class Claim as well as other claims released pursuant
4 to this Settlement provided in Section XIV of this Agreement.

5 FFF. “Settled Class Claims” means the claims that the Class will release pursuant to
6 this Settlement as provided in Section XIV.1 of this Agreement.

7 GGG. “Settlement” means the settlement and compromise of this Action and the settled
8 Claims as provided for in this Settlement Agreement and, to the extent applicable, the
9 Supplemental Confidential Agreement.

10 HHH. “Settlement Administrator” means the person whom Class Counsel may hire,
11 subject to Court approval, who is to be responsible for, among other things, providing the Class
12 Notice to Class Members and/or assisting with the administration of the Settlement.

13 III. “Settlement Agreement” means this Class Action Settlement Agreement and any
14 accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such
15 amendments.

16 JJJ. “Settlement Fund(s)” means the Cash Settlement Fund plus the Stock Settlement
17 Fund.

18 KKK. “Stock Pledge and Security Agreement” means the document entitled “Stock
19 Pledge and Security Agreement” entered into by Miguel Paredes, as Trustee of the Trust, the
20 Lackeys as Co-Trustees of the Lackey Trust and Ritchie, dated December 31, 2018 (produced by
21 Defendants at bates numbers LFT 000454-000462 and Paredes 0454-00462).

22 LLL. “Stock Purchase Agreement” means the document entitled “Stock Purchase
23 Agreement among The Shareholders of Ritchie Trucking Service Holdings, Inc., Ritchie
24 Trucking Service Holdings, Inc. and The People Business Employee Stock Ownership Plan and
25 Trust” dated December 31, 2018 and bearing bates-number Paredes_00299 through 0425.

1 MMM. “Stock Settlement Fund” means the stock released as a result of the terms of this
2 Settlement Agreement.

3 NNN. “Subordinated Promissory Note” means the document entitled “Subordinated
4 Promissory Note (Company Note)” entered into between Ritchie and the Lackeys as Co-Trustees
5 of the Lackey Trust, which Note is dated December 31, 2018 and had an original principal
6 amount of \$19,543,000.00 (produced by Defendants at bates stamp LFT 000551-000559 and
7 Parades 000551-0559).

8 OOO. “Supplemental Confidential Agreement” means the Supplemental Confidential
9 Agreement to Class Action Agreement entered into by Class Counsel and counsel for Defendants
10 filed under seal with the Court setting forth the terms on which Class Counsel and/or one of the
11 Defendants can withdraw from the Settlement in event that a Class is certified under Rule
12 23(b)(3) and certain other conditions are met.

13 PPP. “Suspense Account” means the account established to hold Employer Stock until
14 Employer Stock is released from that account as described in Section 2.01(D) of the 2018 Plan
15 Document.

16 QQQ. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts,
17 and other charges of any kind (together with any and all interest, penalties, additions to tax and
18 additional amounts imposed with respect thereto) imposed by any governmental authority,
19 including income tax and other taxes and charges on or regarding franchises, windfall or other
20 profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security,
21 workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the
22 nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license,
23 registration, and documentation fees; and customs’ duties, tariffs, and similar charges.

24 RRR. “Termination Notice” will have the meaning set forth in Section XV.1 of this
25 Settlement Agreement.

SSS. “Trust” means the trust created under the Plan, i.e. The People Business Employee Stock Ownership Trust.

TTT. “Trustee” means the trustee of the Plan as described in the 2018 Plan Document, which is currently Miguel Paredes of Prudent Fiduciary Services.

UUU. “Valuation” means the determination of Fair Market Value as defined in Section 2.27(B) of the 2018 Plan Document.

VVV. “Valuation Report” means the document that sets for the determination, analysis and explanation of the Valuation opinion.

II. CLASS CERTIFICATION

1. **Motion.** Class Counsel shall draft and file a motion to certify the Class Claims on behalf of the Class pursuant to Rule 23(b)(1) and/or (2) and may alternatively seek to certify the Class, pursuant to Rule 23(b)(3) for purposes of this Settlement

2. **Parties’ Cooperation.** Solely for purposes of this Settlement, the Parties shall cooperate and each use their best reasonable efforts to obtain certification of a mandatory settlement class under Rule 23(b)(1) and/or Rule 23 (b)(2) if possible, and alternatively only if the Court finds the requirements of under Rules 23(b)(1) or 23(b)(2) are not met, certification pursuant to Rule 23(b)(3); however, the Parties have entered into a Supplemental Confidential Agreement (to be filed under Seal with the Court) that sets forth the conditions on which Defendants have the option to terminate this Settlement in the event that (a) the Court certifies Counts I through IV and VI through VIII, under Rule 23(b)(3) rather than Rule 23(b)(1) or (b)(2) or otherwise permits opt out rights and (b) certain other conditions set forth in the Confidential Supplemental Agreement are met.

3. **Non-Opposition.** Solely for purposes of this Settlement, none of the Defendants will oppose certification of the Class for settlement purposes only, as provided for in this Settlement Agreement, including on any appeal concerning the approval of this Settlement

so long as the approval is consistent with the terms of this Settlement Agreement, including this Section and Sections X and XI.

4. Effect of Certification in the Event of Non-Approval of the Settlement.

If the Court declines to enter the Final Order as required by Section X.2 of this Agreement and either no appeal is taken from that decision or that decision is sustained on appeal or the Final Order granting approval of this Settlement is reversed on appeal, and the Termination Notice has become effective pursuant to Section XV.2. of this Agreement, the certification of the class for settlement purposes is void and the Parties will revert to the positions they held prior to the Settlement. In that event, Plaintiff will be entitled thereafter to file a motion seeking to certify the Class and Defendants will be entitled to oppose a motion for certification. Plaintiff and Class Counsel will not seek certification on the grounds that Defendants previously agreed to class certification for purposes of this Settlement. Any order that declines to certify the class or any voiding of the certification for settlement purposes will not be used or cited as a basis to oppose certification of a Class at a later point in this litigation.

III. CLASS NOTICE

1. Provision of Class Notice. Upon the date specified in the Court's Preliminary Approval Order, the Settlement Administrator (or if no Settlement Administrator is appointed, Class Counsel) will be responsible for providing Class Notice to the Class Members.

2. Contents. The Class Notice, in a form approved by the Court, will contain at least the following information (in addition to any other information required by the Court): (a) a brief description of the claims advanced by the Class and a brief description of the defenses that Defendants would have asserted; (b) a summary of the terms of the Settlement; (c) information on the attorneys' fees and costs sought by Class Counsel; (d) a description of the proposed Plan of Allocation of the Settlement to the Class; and (e) information about the Final Approval Hearing.

1 3. **Procedure to Submit Class Notice.** Class Counsel will provide
2 Defendants' counsel with a draft of the Class Notice at least ten (10) calendar days before the
3 Motion for Preliminary Approval, Settlement Agreement and the Supplemental Confidential
4 Agreement are filed with the Court. Defendants will provide proposed edits to the Class Notice
5 to Class Counsel before the end of those ten (10) calendar days. To the extent that the Parties
6 cannot reach agreement on the language in the Class Notice proposed to the Court, Class
7 Counsel will submit Class Counsel's proposed Class Notice and also a redline version showing
8 Defendants' proposed changes. The Court will resolve any issues regarding the Class Notice.

9 4. **Method of Providing Class Notice.** Class Notice will be provided by the
10 Settlement Administrator to each individual participant Class Member and each beneficiary
11 Class Member receiving benefits under the Plan (for whom Defendants have address information
12 and that beneficiary Class Member has a separate address from the participant): (a) by email if an
13 email address is available or by mailing via first class U.S. Mail to Class Members, and (b) by
14 posting the Class Notice (and other documents filed in the litigation) on a dedicated website.
15 Defendants will cooperate with Class Counsel and the Settlement Administrator to facilitate
16 providing Class Notice and other settlement-related communications by providing emails and
17 mailing addresses for all Class Members, to the extent such information is reasonably available
18 in the records of Defendants. For beneficiary Class Members who have the same address as the
19 participant Class Member, a single Class Notice will be mailed to the same address. For all other
20 beneficiary Class Members (including those for whom no email or address information is
21 known), Class Notice will be provided by posting the Class Notice on the dedicated website
22 maintained by the Settlement Administrator.

23 5. **Additional Information Provided.** As soon as practicable, but not later
24 than 14 days after issuance of the Final Approval Order becomes Non-Appealable, Ritchie (or its
25 successor) or the Settlement Administrator (at the expense of Defendants, which Defendants
26 have agreed will be shared one-third by Ritchie, one-third by the Lackeys and one-third by the
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Trustee), will provide to each Class Member (by email or mail) who is then-eligible -with forms and information sufficient to elect an immediate distribution or rollover under the terms of the 2018 Plan Document with an Election Distribution Packet of that Class Member's share of the Settlement Fund(s) from his or her Plan Account. Ritchie (or its successor) will also provide Class Counsel and/or the Settlement Administrator with a copy of those forms and information. Any Class Member will also be entitled to request and receive the necessary forms directly from Ritchie (or its successor) to elect a distribution of his or her share of the Settlement Fund. The earliest that Ritchie will be obligated to comply with this paragraph is June 1, 2025.

6. **Settlement Administrator.** Class Counsel will request that a Settlement Administrator be appointed by the Court. The Parties and their counsel will reasonably cooperate with any Settlement Administrator to facilitate providing Class Notice and other settlement-related communications and settlement administration.

7. **Undeliverable Notices.** In the event that a Class Notice is sent by email and returned as undeliverable, the Notice will be sent by U.S. Mail. In the event that a Class Notice sent by U.S. Mail is returned as undeliverable, Class Counsel and/or the Settlement Administrator will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

8. **Class Data.** Within 7 days after the Preliminary Approval Order is entered, Ritchie (or its successor) will provide Class Counsel and the Settlement Administrator with the following contact information in electronic form for each Class Member, to the extent such information is reasonably available in possession, custody or control of Ritchie or any of the Defendants:

- (a) **Contact & Account Data:** (1) name; (2) a street mailing address; (3) telephone number(s); (4) Social Security number; (5) sufficient information identifying the beneficiary Class Member (including any persons who have a QDRO) for each participant Class Member; (6) the

current number of shares in their account, (7) the dates on which any shares in their Plan accounts were liquidated and distributed; (8) the number of shares stock in their Plan accounts at any liquidation dates; and (9) the price at which stock in their Plan Account was liquidated. To the extent that Defendants previously provided any of this information, any supplemental data provided must contain sufficient information to allow Class Counsel to link the information to allow Class Counsel to identify the specific Class Member.

(b) **Excluded Persons:** Sufficient information to identify any Excluded Persons and ensure no Excluded Persons are included in the Class Data.

(c) **Additional Information.** Defendants will also provide other information to Class Counsel and the Settlement Administrator reasonably requested by Class Counsel or by the Settlement Administrator, to locate or contact Class Members whose mail is returned as undeliverable.

9. **Class Notice Costs and Expenses.** The costs of Class Notice will be paid from the Settlement Fund subject to the Court's approval of the amount in the Final Order.

10. **Declaration Regarding Class Notice.** Within 30 calendar days after the date on which Notice is required to be sent (or another time set by the Court), Class Counsel will file a declaration with the Court (and if mailing was performed by the Settlement Administrator, the declaration will be from the Settlement Administrator) confirming that the Notice and related information was sent in accordance with the Preliminary Approval Order.

IV. SETTLEMENT FUND

A. **Cash Settlement Fund**

1. **Payment of Cash Settlement Amount into Escrow Account.** As settlement of the Class Claims, the Nexus-Insured Defendants, other than the Plan, will instruct Nexus Specialty to pay, or will cause to be paid the Cash Settlement Amount (i.e. \$485,000.00)

1 by check or wire transfer into the Escrow Account within thirty (30) calendar days after the later
2 of (a) entry of an order by the Court preliminarily approving the Settlement; (b) a fully-executed
3 copy of this Agreement, and (c) Class Counsel providing to Defendants' Counsel W-9 form(s) for
4 the Escrow Account and all necessary payment/wiring instructions to the Escrow Account.

5 2. **Custody of Settlement Fund.** The Cash Settlement Fund held in the
6 Escrow Account will be deemed to be in the custody of the Court and will remain subject to the
7 jurisdiction of the Court and will be administered in accordance with the terms of this Settlement
8 Agreement and the Orders of the Court. Except as provided herein, any funds in the Settlement
9 Fund will not be paid to the Class Members pursuant to the Plan of Allocation until the Final Order
10 becomes Non-Appealable.

11 3. **Management of the Settlement Fund.** Until the Final Order becomes Non-
12 Appealable or unless and until the Settlement is terminated in accordance with this Settlement
13 Agreement, the Cash Settlement Fund will be held in the Escrow Account established by Class
14 Counsel, for which an Escrow Agent will act pursuant to the terms of the Escrow Agreement or as
15 ordered by the Court. After the Final Order becomes Non-Appealable, Class Counsel will have the
16 sole right and duty to manage the Settlement Fund in compliance with the terms of the Final Order.
17 Any earnings or interest earned by the Cash Settlement Fund will become part of the Cash
18 Settlement Fund.

19 4. **Effect of Settlement Not Receiving Final Approval** In the event the
20 Settlement is not finalized, revoked, terminated, or otherwise does not become final or effective
21 for any reason, all funds paid by Nexus pursuant to Paragraph A.1 of this section shall be returned
22 to Nexus, plus any interest or other income earned thereon less actual amounts paid for notice,
23 taxes and/or administration, and Nexus's Agreement to fund the cash settlement shall be null, void,
24 and of no force and effect, except with respect to the matters described in this paragraph.

25 **B. Loan Modification and Stock Settlement Fund**

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1 1. **Loan Modification:** Contemporaneous with the Final Order becoming
2 Non-Appealable, the principal balance of each of the Notes will each be reduced by \$1.4 million
3 effective as of January 1, 2024.

4 2. **Limits of the Effect of the Loan Modification:** Except for the Loan
5 Modification, nothing in this Settlement Agreement is intended in any way to affect, reduce,
6 impact or otherwise change the indebtedness owed at any time to the Lackeys as Co-Trustees of
7 the Lackey Trust, the Lackey Family Trust, Bruce Lackey or Pamela Lackey in connection with
8 the 2018 Transaction, which indebtedness may be reflected by among others, the Stock Purchase
9 Agreement, the Secured Nonrecourse Promissory Note, the Notes, the Stock Pledge and Security
10 Agreement, the Credit Agreement, the Subordinated Promissory Note, the Company Note, the
11 Loan and Security Agreement, the ESOP Note, the ESOP Stock Pledge and Security Agreement
12 and any warrants or anything owed under or relating to the 2018 Transaction.

13 3. **Release of Employer Stock Resulting from Loan Modification:** As a
14 result of the Loan Modification, 115,000 shares of Employer Stock held in the Suspense Account
15 of the Plan will be released and allocated to Plan Stock Accounts of Class Members pursuant to
16 and consistent with the Plan of Allocation within the time required by Section V.B.2 of this
17 Agreement.

18 4. **Representations Regarding the Notes.** Bruce C. Lackey and Pamela L.
19 Lackey individually and as Co-Trustees of the Lackey Trust represent, and the other Defendants
20 represent to the best of their knowledge, that the original principal balance of Secured Non-
21 Recourse Promissory Note was \$19,543,000.00 and the original principal balance of the Notes
22 was \$19,543,000.00 and the principal amount of none of the Notes was increased pursuant to
23 Section 2.3 of the Stock Purchase Agreement. Bruce C. Lackey and Pamela L. Lackey
24 individually and as Co-Trustees of the Lackey Trust represent, and the other Defendants
25 represent to the best of their knowledge, that the current principal balance of the ESOP Note is
26 \$18,252,399.14 as of December 31, 2023, and that the Subordinated Promissory Note has a
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current principal balance of \$13,236,154.00. As of the date that this Agreement is fully-executed, Bruce C. Lackey and Pamela L. Lackey as Co-Trustees of the Lackey Trust, represent that they still hold the following Note(s) that are subject to the Loan Modification and this Note has not been sold, transferred, assigned, pledged or otherwise encumbered: Subordinated Promissory Note. As of the date that this Agreement is fully-executed, Ritchie represents that it still hold the following Note that is subject to the Loan Modification and this Note has not been sold, transferred, assigned, pledged or otherwise encumbered: the ESOP Note.

5. Non-Transfer and Non-Assignment of the Notes. The Lackeys as Co-Trustees of the Lackey Trust, any subsequent trustees of the Lackey Trust, Ritchie and the Trustee will not sell, transfer, assign, pledge or in any manner encumber, as may be applicable, any Notes that are the subject of the Loan Modification or subject to this Settlement until after the Final Order becomes Non-Appealable and the Loan Modification has been effectuated.

6. Restriction on Sale of Stock by ESOP or Liquidation of Ritchie. The Trustee (and any subsequent Trustee) will not sell, transfer, assign, pledge or in any manner further encumber the stock owned by the ESOP until after the Final Order becomes Non-Appealable and the 115,000 shares are released pursuant to this Agreement until those shares are allocated to Class Members accounts as provided in this Agreement. Defendants agree not to either liquidate or cause the liquidation of Ritchie until after the Final Order becomes Non-Appealable and shares released from the ESOP's suspense account as a result of the Loan Modification have been allocated to the accounts of the Class Members. In the event that the Trustee receives an unsolicited offer, prior to the Final Order becoming Non-Appealable, to purchase stock owned by the ESOP, then an independent fiduciary (i.e. one who not party to this agreement) for the ESOP may agree on the ESOP's behalf to sell the stock only pursuant to the following terms and conditions:

- (a) The proposed purchaser is neither one of the Excluded Persons (or an agent or affiliate of any of them) nor a party-in-interest;

- (b) The offer to purchase the stock is at price per share that is at or more than the fair market value of the ESOP's shares as determined in good faith by an independent fiduciary (i.e. one who is not party to this agreement) consistent with ERISA § 3(18) and any regulations thereunder and the terms of the Plan;
- (c) The Trustee (or independent fiduciary) informs Class Counsel and the Court (under seal if necessary and appropriate) of the existence and the terms of the offer and transaction;
- (d) Engaging in the transaction by which the ESOP shares will be sold does not violate ERISA;
- (e) The 115,000 shares to be released pursuant to this Agreement will be liquidated at a price that is the greater of (i) the price per share in the transaction or (ii) the price per share in the Valuation performed consistent with Section V.B.3(a)(2) of this Agreement;
- (f) The participants or beneficiaries in the ESOP will be entitled to direct the ESOP as to the voting of shares allocated to the accounts of such participants and beneficiaries for approval or disapproval of the sale of the stock owned by the ESOP and a majority of those shares (or a greater number if required by law) must vote in favor of the sale of stock owned by the ESOP;
- (g) For all purposes in the transaction, including liquidation and distribution of the shares and determining the voting rights of participants and beneficiaries, the 115,000 shares to be released pursuant to this Agreement shall be deemed released and allocated to the accounts of participants and/or beneficiaries consistent with the Plan of Allocation and will be treated as allocated as of December 31, 2024;

- (h) The Trustee (or independent fiduciary) shall vote shares of stock in the Suspense Account in the same proportion of participant and beneficiary votes received in favor of or against the sale of stock owned by the ESOP;
- (i) For purposes of distributing any proceeds from the sale of stock owned by the ESOP to participants and beneficiaries of the ESOP, the 115,000 shares to be released pursuant to this Agreement shall be released and allocated to the accounts of participants and/or beneficiaries consistent with the Plan of Allocation and will be treated as allocated as of December 31, 2024.

C. Both Settlement Funds

1. **Qualified Settlement Fund.** The Settlement Funds are intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

2. **Management of the Settlement Funds in the Plan.** After receipt of the proceeds of the Settlement Funds by the Plan, the proceeds of the Settlement will be held, managed, and invested consistent with this Agreement. In the event of a conflict between the Plan (or any Amendment of the Plan) and this Agreement regarding the proceeds of the Settlement, this Settlement Agreement will control.

3. **Treatment as Restorative Payments:** To the extent that the payments to the Cash Settlement Funds and Stock Settlement Funds qualify as Restorative Payments under the Internal Revenue Code § 415 and 26 C.F.R. § 1.415(c)-1(b)(2)(ii)(C) and to the extent applicable under the Plan, Defendants may treat the contributions as Restorative Payments for purposes of IRC § 415 so long as there are no adverse tax or financial consequences to Class Members.

V. DISTRIBUTIONS FROM THE SETTLEMENT FUNDS

A. Cash Settlement Fund

1 1. **Before and After the Effective Date.** At the direction of Class Counsel,
 2 the Escrow Agent will be authorized to pay from the Cash Settlement Fund in accordance with
 3 the terms of the Escrow Agreement (a) any actual or estimated taxes on any income earned on
 4 the Settlement Fund(s), (b) all costs and expenses related to the preparation of such tax filings or
 5 payments, and (c) all costs and expenses related to providing the Class Notice; and (d) other
 6 costs and expenses incurred by the Settlement Administrator. Any dispute regarding the
 7 reasonableness of any expense incurred, paid, or owing will be adjudicated by the Court, but in
 8 no event will such a dispute require Class Counsel to cause or allow the Settlement Fund to fail
 9 to make a tax payment in a timely manner.

10 2. **Attorneys' Fees, Expenses/Costs & Service Award.** Any amounts
 11 awarded by the Court as the Fee Award, Expense Award or Service Award will be paid from the
 12 Cash Settlement Fund to Class Counsel consistent with the Orders of the Court. In the event that
 13 an appeal is taken only regarding the Fee Award, Expense Award or Service Award, but the
 14 appeal does not challenge the terms of the Settlement, the Net Settlement Fund will be calculated
 15 by holding in reserve in the Escrow Account any items that are in dispute on the appeal, but such
 16 an appeal will not require delay of distribution of the amounts for items that are not in dispute on
 17 appeal.

18 3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming
 19 Non-Appealable, Class Counsel will be authorized to establish a reserve from the Cash
 20 Settlement Fund to pay any taxes that are owed or will be owed (but not yet due) by the Cash
 21 Settlement Fund and for expenses related to payment of taxes or filing of tax returns or to the
 22 extent that there are other costs of administration of the Settlement not paid by Defendants.

23 4. **Calculation and Transfer of the Net Cash Settlement Fund.** The Net
 24 Cash Settlement Fund will be calculated by deducting the following amounts from the Cash
 25 Settlement Fund: (a) any Taxes on the income or earnings by the Settlement Fund, any tax-
 26 related expenses, and the creation of any reserve for future expenses (as described above); (b)

any expenses incurred in connection with the administration of the Settlement Fund; and (c) any Fee Award or Expense Award to Class Counsel and any Service Award from the Settlement Fund. Within fifteen (15) days after the Final Order becomes Non-Appealable, Ritchie (or its successor) and/or the Trustee will provide wire transfer instructions to Class Counsel to enable Class Counsel to transfer the funds from the Escrow Account to the Trust. After the Final Order becomes Non-Appealable, the Net Cash Settlement Fund will be transferred from the Escrow Account to the Plan and allocated in accordance to the Plan Accounts of Class Members consistent with the Plan of Allocation.

5. Distributions of the Net Cash Settlement to Class Members.

Distributions from the Net Cash Settlement Fund will be paid through the Plan and then distributed to Class Members who are entitled to receive an allocation from the Settlement Fund as follows:

(a) As soon as practicable after, but not later than 14 days after, the date on which the Net Cash Settlement Fund proceeds are transferred to the Trust (which deadline can be extended, if necessary, with the agreement of Class Counsel, which consent will not be unreasonably withheld), Ritchie (or its successor) will send to (or cause to be sent to) each Class Member, who is then eligible to receive an immediate distribution under the 2018 Plan Document, an Election Distribution Packet to the extent that one has not yet been sent to that Class Member.

(b) For any Class Member who receives an allocation from the Net Cash Settlement Fund to his or her Plan account, who is eligible for an immediate distribution under the 2018 Plan Document, Ritchie (or its successor) will make (or cause to be made) a distribution (or rollover) to that Class Member as directed by the election form within the later of: (i) 30 days of receiving the distribution or rollover instructions from the Class Member, or (ii) 30 days after the Trust has received amounts from the Net Cash Settlement Fund and Ritchie has

received instructions from Class Counsel or the Settlement Administrator regarding the allocation of any portion of the Net Cash Settlement Fund to each Class Member.

(c) For all other Class Members who receive an allocation from the Net Cash Settlement Fund (i.e. who are either not eligible to receive an immediate distribution under the 2018 Plan Document or do not make a distribution election), their proceeds from the Net Settlement Fund will be allocated to that Class Member's individual General Account under the Plan (as defined in Section 2.01(C) of the 2018 Plan Document) as soon as practicable after, but not later than 14 days after, the date on which the Net Cash Settlement Fund proceeds are transferred to the Trust.

(d) The earliest date on which Ritchie (or its successor) will be obligated to comply with this paragraph is June 1 of the year following the Valuation Date (e.g. if the Valuation Date is December 31, 2024, the earliest date for compliance will be June 1, 2025).

B. The Stock Settlement

1. **Calculation of Allocation of Employer Stock.** Within 60 calendar days of the entry of the Preliminary Approval Order, Ritchie (or its successor) will provide (or cause to be provided) to Class Counsel a preliminary calculation showing the manner and amounts by which the 115,000 shares of Employer Stock that to will be released from the Suspense Account and will be allocated to the ESOP Accounts of Class Members consistent with the Plan of Allocation that was preliminarily approved by the Court. Within 30 calendar days of the entry of the Final Order, Ritchie (or its successor) will prepare and provide (or will cause to be prepared and provided) to Class Counsel the final proposed calculation of the shares of Employer Stock to be allocated to the ESOP Accounts of Class Members, which such calculation will be consistent with the Plan of Allocation finally approved by the Court. At its option, Ritchie may choose to have any of these calculations performed by a third party administrator (such as Blue Ridge ESOP Associates, the current third party administrator for the Plan), but any expense to prepare

and provide such calculations will be expense borne by Ritchie and not the Plan or the Class. Any dispute about the calculations, including whether such calculations are consistent with the Plan of Allocation, will be decided by the Court.

2. **Release of Employer Stock as a Result of Loan Modification.** Ritchie (or its successor) will cause the Plan to release 115,000 shares of Employer Stock from the Plan's Suspense Account and allocate those shares of Employer Stock to the ESOP Accounts of Class Members, consistent with the court-approved Plan of Allocation, by the later of the following: (a) 30 days of the Final Order becoming Non-Appealable, (b) 15 days after Class Counsel has approved the calculations provided by Ritchie (or a third party administrator) or (c) 30 days after the Court (or any appellate Court) resolves any dispute regarding the calculations.

3. **Distributions of Stock Settlement to the Class.** Distributions to Class Members who are entitled to receive an allocation from the Stock Settlement Fund will be made consistent with the Plan of Allocation finally approved by the Court, as follows:

(a) **Class Members Eligible for Immediate Distribution.** For Class Members who are eligible for an immediate distribution from the Plan (as provided under the terms of the 2018 Plan Document) when the Final Order becomes Non-Appealable:

(1) Ritchie (or its successor) will make a distribution or rollover as directed by the election form within the later of 30 days after (i) the Final Order becoming Non-Appealable or (ii) the deadlines in Section V.B.2 or (iii) receiving the distribution or rollover instructions from the Class Member. The earliest that Ritchie will be obligated to comply with this paragraph is June 1 of the year following the Valuation Date (e.g. if the Valuation is as of December 31, 2024, the earliest date for compliance will be June 1, 2025).

(2) Any Employer Stock allocated to Class Members eligible for an immediate distribution will be liquidated (i.e. converted to cash) at Fair

Market the Value (as defined in Section 2.27(B) of the 2018 Plan Document) of the Employer Stock as of the December 31 that precedes the date on which the Final Order becomes Non-Appealable (the “Valuation Date”). Any valuation of Employer Stock will be based on a valuation performed by a qualified independent appraiser that meets the definition of adequate consideration under ERISA § 3(18)(B), 29 U.S.C. § 1002(3)(18) and the definition of Fair Market Value (as defined in Section 2.27(B) of the 2018 Plan Document). For purposes of determining the Fair Market Value of Employer Stock to be liquidated for Class Members eligible for an immediate distribution under the terms of the 2018 Plan Document, the valuation will exclude from consideration as expenses of Ritchie any (a) amount paid in this Settlement (b) expenses incurred in administering this Settlement or (c) any attorneys’ fees or expenses paid by or incurred by Ritchie in connection with or related to this litigation. Ritchie and/or the Trustee will use their respective best efforts to ensure that the independent appraiser completes the valuation by no later than the June 1 after the Valuation Date. Within ten business days after the qualified independent appraiser issues an opinion on the Valuation, the Plan Administrator or the Trustee Defendants will provide a copy of the Valuation Report to Class Counsel. In the event of any dispute as to Valuation Date or the Valuation, that dispute will be decided by the Court. After receiving this Valuation, the Trustee will provide a statement to Class Counsel confirming that the Valuation excluded from consideration the forementioned Expenses of Ritchie.

(b) **Class Members Not Eligible for Immediate Distribution.** For all other Class Members who receive an allocation from the Stock Settlement (i.e. who are either not

eligible to receive an immediate distribution under the 2018 Plan Document or do not make a distribution election before the Final Order becoming Non-Appealable), their proceeds from the Net Settlement Amount shall be held in the Stock Account in the Plan or, if the Class Member does not have an existing Plan account, such an account will be established and the settlement proceeds will be allocated to such account within the later of (i) 30 days of the Final Order becoming Non-Appealable or (ii) 30 days after Ritchie (or its successor) has received approval from Class Counsel regarding the allocation of Stock for these Class Members or (iii) 30 days after the Court (or any appellate Court) resolves any dispute regarding the allocation calculations. For these Class Members, they will be eligible to receive a distribution of the Stock under the applicable terms of the Plan and at the time and manner specified in the Plan.

C. Provisions Applicable to Both Funds

1. Costs and Expenses Related to Settlement Administration and Distribution. Except for the costs and expenses of the Settlement Administrator, Ritchie will bear all costs of administration of the Settlement (other than the costs of the Class Notice packet) including any costs relating to distribution of the Settlement Fund from the Trust. No fees, expenses, costs, or other charges will be imposed on Class Members to have their proceeds from this Settlement deposited into the Plan Accounts or otherwise related to administration of the Settlement, or the costs of the Independent Fiduciary. To the extent that the allocation of amounts from the Settlement Funds to Class Members involves any charges, such costs will be borne by Ritchie.

2. Restrictions on Administration and Distribution Expenses. No fees, expenses, costs, or other charges will be imposed on Class Members to receive their proceeds from this Settlement, including any charges that would otherwise be imposed by the Plan on distributions for those Class Members eligible for an immediate distribution under the terms of the 2018 Plan Document at the time that the Final Order becomes Non-Appealable. For any Class Member who is eligible for an immediate distribution at the time that the Final Order

1 becomes Non-Appealable and who has made a request to Ritchie (or its successor) for a
2 distribution within 90 days after the initial Election Distribution Packet is sent to that Class
3 Members, no administrative costs will be charged by the Plan (or any service provider) to that
4 Class Member. For those Class Members who do not elect a distribution within 90 days after the
5 initial Election Distribution Packet is sent to Class Members, any costs related to administration
6 of the Plan (but not costs for distributions) or related to the investment of Plan assets will be
7 charged as permitted by the Plan.

8 **3. Amendment of Plan Document to Effectuate this Settlement.** To the
9 extent necessary to effectuate the provisions of the Settlement, including related to distribution,
10 administration, and investment of the proceeds of the Settlement, Ritchie, as the Plan Sponsor of
11 the Plan, will adopt and implement any amendment to the Plan (“Plan Amendment”) consistent
12 with the provisions of this Settlement Agreement within 15 days of the date on which the Final
13 Order becomes Non-Appealable. Ritchie (or its successor) will provide Class Counsel with a
14 copy of any actual Amendment as adopted within 14 calendar days after its adoption. In the
15 event of a dispute, the Court will decide whether the language of the proposed Plan Amendment
16 is consistent with the terms of this Settlement Agreement. Any Plan Amendment acceptable to
17 Class Counsel or approved by the Court may not be rescinded, modified, or eliminated without
18 written notification to Class Counsel at least 10 business days before the adoption of any such
19 modification or elimination and the approval of the Court; provided, however, the Amendment
20 may be rescinded, modified or eliminated without such notice or approval at any time after the
21 Settlement Fund is fully distributed.

22 **5. Prohibition of Amendments Inconsistent With This Agreement.** No
23 amendment to the Plan will be adopted that is inconsistent with this this Settlement Agreement,
24 the Plan of Allocation as approved by the Court or any Orders of the Court unless agreed to by
25 Class Counsel in writing and approved by the Court. In the event any Plan Amendment that
26 conflicts with this Settlement Agreement, the Plan of Allocation or any Court Order regarding
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1 this Settlement, that amendment will not apply to any Class Member. In the event of a dispute,
 2 the Court will decide whether the language of the proposed Amendment is consistent with the
 3 terms of this Settlement Agreement.

4 **6. Defendants' Delegation of Obligations:** Defendants, including Ritchie,
 5 may delegate to and reasonably rely on the assistance of service providers to effectuate the
 6 distributions required above, but Defendants, including Ritchie, remain ultimately responsible
 7 for fulfilling it, her or their respective responsibilities under this Settlement Agreement
 8 notwithstanding such delegation.

9 **7. Tax Liability.** The Settling Parties will not have any liability or
 10 responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund,
 11 and any such Taxes will be paid out of the Settlement Fund.

12 **VI. PLAN OF ALLOCATION**

13 **1. Proposed Plan of Allocation.** Class Counsel will propose and submit a
 14 Plan of Allocation to the Court as the recommended method of determining and distributing the
 15 proceeds of the Net Cash Settlement Fund to members of the Class and the proceeds of the Stock
 16 Settlement Fund to Class Members. Class Counsel's preliminary proposed Plan of Allocation is
 17 attached to this Settlement Agreement.

18 **2. Defendants' Objection to the Plan of Allocation.** Defendants will have
 19 the right to object to the Plan of Allocation, including any objection that the Plan of Allocation
 20 would result in adverse Tax consequences to the Plan. To the extent that the Parties cannot
 21 resolve Defendants' concerns about the Plan of Allocation, Defendants will have the right to
 22 present their objections about the Plan of Allocation to the Court within 14 days of Plaintiff
 23 filing the Preliminary Approval Motion. To the extent that there is a dispute whether the Plan of
 24 Allocation has an adverse impact on the Plan, that dispute will be resolved by the Court.

25 **3. Modification of Plan of Allocation.** Any action by the Court regarding
 26 the proposed Plan of Allocation, including any rejection or modification by the Court or on
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1 appeal, will constitute a material modification of this Settlement Agreement, will not void this
 2 Settlement Agreement, and will not provide a basis for any Party to withdraw from this
 3 Settlement Agreement, except that the Plan of Allocation must prevent the Excluded Persons
 4 from receiving any distribution from the Settlement Fund.

5 **4. Class Members' Right to Submit Plan Account Data.** Before the Final
 6 Approval Hearing and by a deadline to be established by the Court, any person identified by
 7 Defendants as a Class Member claiming that the data provided by Defendants about a
 8 participant's Plan account is erroneous will be entitled to demonstrate that such an error will
 9 impact the amount allocated to that participant under the Plan of Allocation. Such submissions
 10 will only be used to adjust amounts allocated to Class Members, subject to Court approval, under
 11 the Plan of Allocation, and such determinations will not have any other effect as to that person's
 12 rights under the Plan.

13 **5. Excluded Persons Prohibited from Receiving Settlement Funds.** None
 14 of the Excluded Persons will directly or indirectly receive any of the proceeds from either of the
 15 Settlement Funds from this Settlement. Any of the Defendants who are or were a participant or
 16 beneficiary in the Plan acknowledge that they will not receive any allocation of any amount from
 17 this Settlement and further agree to obtain, if necessary, an authorization from any beneficiary
 18 (including a spouse) necessary to forego any such allocation.

19 **6. No Claim Based on Plan of Allocation, Calculations or Distribution**
 20 The Class will not have any claim against, and will hold harmless, Plaintiff, the Plan,
 21 Defendants, counsel to any of the foregoing (including Class Counsel), the Settlement
 22 Administrator, or other individuals involved in Plan of Allocation, the calculations or the
 23 distributions under the Plan of Allocation, from any claim based on the Plan of Allocation of the
 24 Settlement Fund or any calculations or distributions of the Settlement Fund made substantially
 25 in accordance with this Settlement Agreement, the Plan of Allocation, or as otherwise may be
 26 authorized by the Court. Without limitation, Plaintiff, Plaintiff's Counsel, Class Counsel,
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Defendants, and Defendants' counsel shall have no responsibility or liability for or in connection with the calculations and distributions of the Settlement Fund to the Class Members.

VII. SETTLEMENT ADMINISTRATION

1. **Appointment of Settlement Administrator.** Any Settlement Administrator will be approved by the Court and will report to Class Counsel and the Court. The Settlement Administrator will have experience providing notice to Class Members and administering settlements in employee benefit class action settlements.

2. **Settlement Administrator's Responsibilities.** Any Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement, the Plan of Allocation, and the Orders of the Court and such other procedures required by the Court:

- (a) Print and mail the Class Notice Packet to the Class Members in accordance with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Class Notice Packets or other reasonable steps to locate missing Class Members;
- (b) Provide any information on any new addresses to the Plan in order to facilitate distribution to Class Members;
- (c) Provide Class Counsel and counsel for Defendants with copies of any objections to the Settlement (to the extent such objections are not filed with the Court) or, if applicable, any request for exclusion (to the extent exclusions are allowed);
- (d) Provide Class Counsel and counsel for Defendants with any challenges to Defendants' data, including all information submitted in support of each challenge;
- (e) Respond to questions from Class Members or refer Class Members to Class Counsel for responses;

(f) Maintain and staff a toll-free phone number and a web site until at least six (6) months after distribution of the Settlement Fund has been made to Class Members;

(g) File with the Court a declaration confirming compliance with the procedures approved by the Court for providing notice to the Class;

(h) Recommend for purposes of allocation of the Settlement Fund(s), subject to the approval by Class Counsel and the Court, whether any Class Members challenging their account data have sufficiently established that Defendants' data is erroneous and send notice of the determinations to those persons;

(i) To the extent that any Class Members are not eligible to receive their Settlement Proceeds through the Plan, issue payment of the Settlement Proceeds to any such Class Members;

(j) Instruct Ritchie (or its successor), consistent with the court-approved Plan of Allocation, as to how the Net Cash Settlement Amount is allocated among the Class and to the accounts of individual Class Members;

(k) Monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k)); and

(l) Any other responsibilities set forth in this Agreement and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

3. **Responsibilities of Ritchie.** Ritchie (or its successor) and to the extent necessary, the Plan Administrator, will be responsible for allocating the settlement payments to

the Class Members' accounts consistent with the Plan of Allocation, including making an initial calculation of the allocation of the Stock Settlement as a result of the Loan Modification and consistent with the court-approved Plan of Allocation and then distributing any payments to Class Members. Ritchie (or its successor) will comply with the instructions of the Class Counsel that are consistent with the Plan of Allocation regarding the amounts to allocate to Class Members. Ritchie (or its successor), any fiduciary of the Plan and Defendants will not have any liability with regard to any action taken, or omitted to be taken, in accordance with and consistent with the Plan of Allocation or such instructions of the Settlement Administrator and/or Class Counsel consistent with the Plan of Allocation.

4. **Prohibition on Assessment of Expenses to the Class.** The Class Members will not be charged or assessed any amount by the Plan (or its service providers), for any of the following: (1) payment of the Class Members' pro rata share of the Settlement Funds, (2) expenses related to administration or implementation of this Settlement, (3) expenses incurred by the Plan, Defendants (or any of their respective service providers) in allocating or distributing any amounts paid into the Plan or to the Class Members (or according to their distribution elections) or (4) any efforts or expenses by the Plan (or its service providers) or Defendants to ensure the tax favored treatment of the Settlement proceeds into the Plan and the continued tax qualification of the Plan with respect to the Settlement.

VIII. ATTORNEYS' FEES, EXPENSES/COSTS & SERVICE AWARD

1. **Attorney's Fees, Expenses and Service Award from the Settlement Fund.** Prior to the deadline for Class Members to object to the Settlement and by a date to be set by the Court, Class Counsel will be entitled to file motions with the Court requesting an award from the Settlement Fund of the following: (a) an award of attorneys' fees ("Fee Award"), (b) reimbursement of litigation costs and expenses ("Expense Award"), (c) an award to the Class Representative ("Service Award"). Any Fee Award, Expense Award or Service Award will be

1 paid solely from the Cash Settlement Fund and is subject to the Court's approval at the Final
2 Approval Hearing and/or any appellate court.

3 2. **Defendants' Non-Opposition.** Defendants and their counsel will take no
4 position regarding the application for or an award of the Fee Award, Expense Award or Service
5 Award so long as the combined amounts as well as settlement administration expenses, do not
6 exceed the Cash Settlement Fund. Defendants will take no position on the Service Award so long
7 as the request does not seek more than \$5,000.00.

8 3. **Payment of Fees/Expenses to Class Counsel.** All amounts to be paid
9 pursuant to this Section will be paid into an account designated by Class Counsel to be
10 distributed and allocated as directed by Class Counsel. Neither Defendants nor their insurers will
11 have any input as to the division of such fees and expenses among counsel.

12 4. **Timing of Payment of Attorneys' Fees and Reimbursement of**
13 **Expenses.** In the event that the Court grants any Fee Award, Expense Award or Service Award
14 from the Cash Settlement Fund, disbursement of any Fee Award, Expense Award or Service
15 Award from the Settlement Fund may be made upon the Final Order becoming Non-Appealable.
16 In the event that there is no appeal of the Final Order of the Settlement, but an appeal solely of a
17 Fee Award or Expense Award from the Settlement Fund, Class Counsel will be entitled to a
18 disbursement from the Settlement Fund of any either item to which there is no appeal.

19 5. **Non-Materiality of Fee Award, Expense Award or Service Award.** In
20 the event that the Court refuses to award attorneys' fees, reimbursement of expenses/costs or a
21 service award in whole or in part, or any such award is rejected or modified on appeal, such
22 rejection or modification will not constitute a material modification of this Settlement
23 Agreement, will not void this Settlement Agreement, and will not provide a basis for any Party to
24 withdraw from this Settlement Agreement.

25 6. **Defendants' Attorneys' Fees & Expenses.** Defendants will bear their
26 own attorneys' fees, expenses, and costs. None of the Defendants will be entitled to seek
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attorneys' fees, costs or expenses out the Settlement Fund. Nor will Defendants be entitled to seek attorneys' fees, costs or expenses from Plaintiff or Class Counsel. No amount of the attorneys' fees, expenses, or costs of this Litigation incurred by Defendants or the administration of this Settlement incurred by any of the Defendants or the Plan, or service providers thereto, will be paid by, or charged to, the Plan account of any Class Member or any amounts paid in this Settlement.

IX. USE OF SETTLEMENT AGREEMENT

1. **No Admission of Wrongdoing.** This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding of wrongdoing by the Parties or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against the Parties as any admission by any such Party with respect to the truth of any fact alleged or the validity of any claim that has been or could have been asserted in the Action or in any litigation or of any liability, negligence, fault, or wrongdoing of any such Party; however, this does not preclude Plaintiff or Class Counsel from arguing that this Settlement Agreement establishes a basis or entitlement for a motion for attorneys' fees, costs or expenses under the provisions of this Settlement Agreement.

2. **No Admission of Infirmary of Claims or Defenses.** This Settlement Agreement is not, nor may it be deemed to be, nor may it be used as an admission of, or as evidence of any infirmity in any of the claims asserted by Plaintiff or Class Members or any defenses by Defendants.

3. **Use in Proceedings.** The Settlement and this Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce the Settlement, this Settlement Agreement or the Final Order. Any Party may file or use the Settlement, this Settlement Agreement and/or the Final Order in any action or proceeding brought against or pursued against that Party to support a claim, a defense, or a counterclaim based on principles of

res judicata, collateral estoppel, release, good faith settlement, judgment bar, or otherwise to support such a claim or defense or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim arising pursuant to the Settlement or this Settlement Agreement or related to Plaintiff's or Class Counsel's request for attorneys' fees and expenses. Defendants may use and disclose the Settlement or this Settlement Agreement in connection with any proceeding involving any of their insurers or any governmental agency with respect to the Plan.

X. APPROVAL OF SETTLEMENT

1. **Preliminary Approval Order.** Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order ("Preliminary Approval Motion"). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will provide for or set forth, among other things:

(a) Certifying the Class Claims on behalf of the Class pursuant to Rule 23(a) and Rule 23(b)(1) and/or (b)(2), or Rule 23(b)(3) of the Federal Rules of Civil Procedure solely for purposes of settlement, with the provision that if this Settlement does not result in the issuance of a Final Order that is Non-Appealable as provided for in this Settlement Agreement, this certification is voided ab initio for all purposes without the necessity of any further order.

(b) Preliminary Approval of the Settlement as set forth in this Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);

(c) Approval of the form of Class Notice, substantially in the form agreed-upon by the Parties, and the manner of distribution and publication which is consistent with this Settlement Agreement, Fed. R. Civ. P. Rule 23, and the requirements of due process;

(d) Appointment of the Settlement Administrator

(e) To the extent separately requested by Defendants, appointment of the Independent Fiduciary;

(f) Deadlines by which all objections to the Settlement must be made or any submissions to the Settlement Administrator regarding their Plan account data must be made (and if a Rule 23(b)(3) class is certified, a deadline for requests for exclusion to be filed);

(g) A schedule for a hearing date for the Court to determine whether the Settlement should be finally approved as fair, reasonable, and adequate, and whether an Order finally approving the Settlement should be entered (“Final Approval Hearing”);

(h) That no objection to the Settlement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the Clerk of the Court and served on the Parties within forty-five (45) days of the publication and/or distribution of the Class Notice;

(i) The Cash Settlement Fund is a Qualified Settlement Fund;

(j) That the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

(k) A deadline for filing of a Final Approval Motion;

(l) A deadline for Plaintiff and Class Counsel to file any motion for attorneys’ fees or costs or expenses;

(m) A requirement for Ritchie to produce the Class Data required pursuant to Section III.8 of this Agreement; and

(n) To the extent separately requested by Defendants, approval of the form of notice under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711 et seq.

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if neither Class Counsel nor Defendants have exercised a right to withdraw pursuant to Section XV, Class Counsel will file a Final Approval Motion. Defendants will not oppose the Final Approval Motion if consistent with the terms of this Settlement Agreement. The

Final Approval Motion will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things:

- (a) Order Final Approval of the Settlement;
- (b) Adjudge that the Settlement is fair, reasonable, and adequate to the Class pursuant to Fed. R. Civ. P. 23(e);
- (c) Dismiss the Action against Defendants with prejudice;
- (d) Adjudge that all Settling Parties be deemed conclusively to have released and waived any and all Settled Claims as provided in this Settlement Agreement;
- (e) Find that the Independent Fiduciary has approved the release to Defendants consistent with the terms set forth in this Settlement Agreement;
- (f) Bar and permanently enjoin the Parties (including Class Members) from prosecuting any and all Settled Claims and claims released by the Independent Fiduciary, as provided in this Settlement Agreement, against any Party from whom they have released claims;
- (g) Determine Class Counsel's request(s) for a Fee Award and an Expense Award; and
- (h) Retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of the Settlement and this Settlement Agreement; (ii) disposition of the Settlement Fund and distributions from the Settlement Fund; (iii) enforcement and administration of the Settlement and this Settlement Agreement, including the release provisions thereof; and

XI. CONDITIONS OF SETTLEMENT

1. **Approval by the Court and Independent Fiduciary.** Each of the following is an express condition of Settlement: (a) the Court certifies for settlement purposes only at least one Class Claim against each Defendant (other than the Plan) pursuant to Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) or alternatively under Rule 23(b)(3); (b) the Court enters a Preliminary Approval Order substantially in the form as required by this

1 Settlement Agreement; (c) the Excluded Persons do not receive any allocation of the Settlement;
2 (d) the Class Data provided to Class Counsel was and remains materially correct; (e) if one or
3 more of the Class Claims are certified for purpose of this Settlement pursuant to Federal Rule of
4 Civil Procedure 23(b)(3), the Class Members who validly opt-out do not meet or exceed the
5 threshold set forth in the Supplemental Confidential Agreement; (f) approval of the Settlement
6 and Settlement Agreement by the Independent Fiduciary that the Settlement as consistent with
7 Prohibited Transaction Exemption (PTE) 2003-39 and approval by the Independent Fiduciary of
8 the release to Defendants on terms set forth in the Settlement Agreement; (g) the Court enters the
9 Final Order, substantially in the form as required by this Settlement Agreement; and (h) the Final
10 Order becomes Non-Appealable.

11 2. **Effect of Modification of the Class Definition.** In the event that the
12 Court does not certify a Class for settlement purposes only substantially similar to the definition
13 set forth in this Settlement Agreement, Class Counsel and Defendants will each have the right to
14 withdraw from and void this Settlement so long as the notice of the exercise of such right is
15 provided to the opposing Party within 14 calendar days after the date on which the Court enters
16 the order establishing the non-confirming Class definition.

17 3. **Material Correctness of Defendants' Information.** A condition of this
18 Settlement is that the documents and data about the Plan, the Transaction and the Class provided
19 to Class Counsel prior to and in connection with the mediations are materially correct. In the
20 event that such documents and data produced by Defendants to Class Counsel was materially
21 incorrect, Class Counsel will have the right prior to the Final Approval Hearing to withdraw
22 from and void this Settlement so long as the notice of the exercise of such right is provided to the
23 opposing Party within 14 days after the date Class Counsel learns of the material incorrectness of
24 the information. In the event there is a dispute regarding the materiality or correctness of any
25 such documents or data about the Class, that dispute will be decided by the Court so long as any
26 Defendant files a motion within 14 days of issuance by Class Counsel of a Termination Notice.

Nothing in this provision affects other rights or remedies which the Parties may have under state or federal law beyond those provided in this Agreement, except to the extent released by this Agreement.

4. **Non-Conditional Matters.** Each of the following are not a condition of the Settlement: (a) Court approval of the Fee Award, (b) Court approval of the Expense Award; (c) Court approval of a Service Award, or (d) any modification of the Plan of Allocation, and (e) approval of any releases among Defendants. No action by the Court or any courts of appeal as to any of the foregoing will prevent the Final Order allowing the approval of the Settlement from becoming Non-Appealable.

XII. INDEPENDENT FIDUCIARY

1. **Hiring.** Defendants, at their own expense, will hire an Independent Fiduciary (for which the specific person or entity hired will be subject to Class Counsel's consent prior to the execution of this Settlement Agreement) to review and approve the Settlement as consistent with Prohibited Transaction Exemption ("PTE") 2003-39 and if the Settlement meets the requirements of PTE 2003-39, the Independent Fiduciary will approve the release to Defendants and other Releasees as set forth in this Settlement Agreement. Defendants have informed Class Counsel that Defendants intend to hire Stephen Caflisch, Fiduciary Counselors Inc., 700 12th Street, NW, Suite 700, Washington, D.C. to serve as the Independent Fiduciary to which Class Counsel has no objection. Any expense of an Independent Fiduciary will not be paid out of the Settlement Fund. In the event of any dispute about the person or entity who will serve as the Independent Fiduciary, the Court will appoint the Independent Fiduciary.

2. **Timing & Effect of Opinion.** The engagement agreement with the Independent Fiduciary will require that its final opinion to be issued no later than the following: (a) twenty-one (21) days prior to the deadline for Class Counsel to file a Motion for Final Approval and that the final opinion will be provided to Class Counsel and (b) 10 business days after Class Counsel files their motion for an award of attorneys' fees and reimbursement of

expenses. If the Independent Fiduciary is engaged by one or more of the Defendants and issues an opinion that the Settlement does not meet the requirements of PTE 2003-39 or states that the Independent Fiduciary will not approve of the release to Defendants and other Releasees on behalf of the Plan on terms comparable to the releases given by Plaintiff and the Class, any Defendant or Class Counsel will have the right, but not the obligation, to withdraw from the Settlement so long as such right is exercised within seven (7) days of when the Independent Fiduciary's opinion is received by the exercising party. If either Class Counsel or one of the Defendants exercises such right under this provision (and the 30 days in Section XV.2 expires without an agreed modification) then the entire Settlement will be terminated as provided in Section XV.3.

XIII. ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

1. **CAFA Notice.** Defendants at their own expense, will prepare and provide the CAFA Notice, including the notices to the Attorney General of the United States and to the appropriate state officials of all states in which a Class Member resides, as specified by 28 U.S.C. § 1715, within ten (10) days after the Settlement Agreement and the Supplemental Confidential Agreement are filed with the Court.

2. **Documents Provided by Class Counsel.** Before filing the Settlement Agreement and the Supplemental Confidential Agreement with the Court, Class Counsel will provide copies of the proposed Class Notice and a draft of the proposed Final Order to Defendants so that Defendants can send those with the CAFA Notice.

3. **CAFA Notice Provided to Class Counsel.** Defendants will provide Class Counsel with a copy of the CAFA Notice and materials that Defendants sent within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided automatically and without further request by Class Counsel.

XIV. RELEASES

Upon the Final Order becoming Non-Appealable, and provided that each Party has

performed all of the respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

1. **Release of Defendants by Plaintiff and the Class.** Plaintiff and the Class Members (including their heirs, executors, administrators, successors, and assigns), solely in their capacity as participants in the Plan or as beneficiaries of Class Members who are participants in the Plan, fully and finally release Defendants, and each of them and, as applicable depending on whether such releasee is an individual or an entity, including each Defendant's past and present officers, directors, shareholders, members, affiliates, independent contractors, agents, insurers, insurance administrators, attorneys, fiduciaries, trustees, heirs, administrators, executors, devisees, conservators, representatives, parents, subsidiaries, predecessors-in-interest, successors-in-interest, trusts, spouses, and assigns, from any and all claims, or causes of action (including any claims for costs, attorneys' fees and/or expenses incurred by Plaintiff or his counsel in this Action as to the Class Claims), whether in law or in equity, whether known or unknown, whether fixed or contingent, that Plaintiff or the Class Members have prior to the date of the date of the execution of this Settlement Agreement that are asserted in the Class Claims, or are based on or arise out of the same factual predicate alleged in the Class Claims, (the "Settled Class Claims").

2. **Release of Plaintiff and the Class by Defendants.** Defendants fully and finally release Plaintiff, each Class Member, Plaintiff's Counsel (and any of its attorneys) and Class Counsel from any and all claims or causes of action, whether in law or in equity, whether known or unknown, that Defendants have or have had against Plaintiff, each Class Member, Plaintiff's Counsel (and any attorneys of those firms) or Class Counsel (a) related to the correctness of the amount in any of the Class Member's Plan accounts (as reflected in the data provided by Defendants) or (b) any claims, including for attorneys' fees, costs, expenses, sanctions, that relate to the filing, commencement, prosecution, or settlement of this Action as to the Class Claims.

1 3. **Conditional Release by the Independent Fiduciary.** Subject to the
2 determination of an Independent Fiduciary (pursuant to Section XII) that the Settlement is
3 consistent with Prohibited Transaction Exemption 2003-39, the Independent Fiduciary will
4 approve the release of the Settled Class Claims (including Paragraph 4 below) and will issue a
5 release of the Settled Class Claims on behalf of the Plan (which release will include a Waiver of
6 California Civil Code Section 1542 similar to in Paragraph 4 below). The release approved by
7 the Independent Fiduciary shall not, however, include a release of claims by any person who is
8 not a member of the Class, including claims with respect to any alleged loss such person may
9 have suffered to his or her Plan account.

10 4. **Waiver of California Civil Code Section 1542.** The Parties on behalf of
11 themselves and all persons and entities on whose behalf they are providing the releases herein,
12 acknowledge and understand that there is a risk that, subsequent to the execution of this
13 Agreement, they may accrue, obtain, incur, suffer, or sustain claims which in some conceivable
14 way are based on or arise out of the same factual predicate alleged in the Class Claims and that
15 such claims are unanticipated at the time this Agreement is signed, or are not presently capable
16 of being ascertained. The Parties further acknowledge that there is a risk that any claims as are
17 known or should be known may become more serious than they now expect or anticipate.
18 Nevertheless, to the extent permitted by California law, the Parties hereby expressly waive all
19 rights they may have in such unknown consequences or results. To the extent permitted by
20 California law, the Parties acknowledge that they have had the benefit of and the opportunity to
21 consult with their counsel, understand the import of Civil Code section 1542, and expressly
22 waive the protection of Civil Code section 1542, which provides as follows:

23 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR**
24 **RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR**
25 **AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
26 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**

DEBTOR OR RELEASED PARTY.

5. **Non-Released Claims.** Notwithstanding the foregoing or any other language in this Settlement Agreement, (a) the Settling Parties are not releasing Claims to enforce this Settlement Agreement, (b) Plaintiff is not releasing his claim in Count V (which is brought individually and not as a Class Claim, and (c) neither Plaintiff nor Plaintiff's Counsel is releasing any claim for attorneys' fees, expenses or costs incurred in bringing Count V which is brought individually by Plaintiff against the Committee Defendants.

6. **Releases Among Defendants:** Defendants represent that they have or will enter to releases among each other, to which neither Plaintiff (individually or on behalf of the Class) nor Class Counsel are a party or binding on Class Members and which are not subject to approval by the Court.

XV. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

1. **Termination Notice.** In the event that one of the Conditions in Section XI.1 is not met and the Final Order has not become Non-Appealable or as otherwise permitted under this Settlement, either Class Counsel or any of the Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice"). After issuing the Termination Notice, the Party providing such Termination Notice will be entitled to withdraw based on the condition specified in the Termination Notice and may void the Settlement within the time period specified in Section XV.2.

2. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the Termination Notice to modify this Settlement to resolve the issue or to extend the time to reach such agreement.

3. **Effect of Withdrawal.** In the event that one of the Settling Parties exercises its right to withdraw from the Settlement within the time specified above, or any other

circumstance which causes the Final Order to not become Non-Appealable and the Parties have not within thirty (30) days of such occurrence either entered into a written modification of the Settlement Agreement or agreed to extend the time to reach such agreement: (a) the monies in the Escrow Account (including any interest or earnings accrued while in Escrow, but less any amount paid or owing for taxes or other expenses incurred in connection with administering the Settlement while in Escrow, including any amounts necessary to prepare tax returns or monies paid or owing to the Settlement Administrator, will be returned to each payor, pro rata according to the amount of its/his respective payment(s) into the Settlement Fund upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) this Settlement will be void *ab initio*; and (d) the Parties' positions, rights, and responsibilities will be deemed to have reverted to their respective status in this Action as if the Settlement had never been executed, and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement never existed.

XVI. RESTRICTIONS ON DEFENDANTS' CONTACT WITH CLASS MEMBERS

1. **Defendants' Contact with Class Members.** After this Settlement Agreement is executed and up to the date Final Order has been entered, Defendants, Defense Counsel, or any person acting on behalf of Defendants or Defendants' Counsel will not communicate with any Class Member about this Action or Settlement except (a) with the prior written consent of Class Counsel (b) as provided in this Section or (c) allowed by the Court (including Court-approved communications).

2. **Communications About the Plan.** The restriction on Defendants' communications with Class Members does not prohibit communications by Defendants about the Plan if such communications are either required under ERISA or IRC or provided consistent with Defendants' fiduciary duties under ERISA so long as such communications make no reference to the Action or Settlement. To the extent that Defendants intend to issue a communication to any

member of the Class that refers to this Action or this Settlement, Defense Counsel will provide Class Counsel with advance notice and a draft of the proposed communication for approval, which approval will not be unreasonably withheld. In the absence of approval by Class Counsel, Defendants may seek leave of Court to issue the communication, but will not issue such communication until the Court approves the communication.

3. **Communications Initiated by Class Members.** If any Class Member initiates contact with the Plan, any Defendant or Defense Counsel to request copies of Plan documents, the summary plan description, or their individual records of contributions and account balances (i.e. documents required to be disclosed under ERISA § 104(b) or 105), Defendants may supply copies of the requested documents so long as Defendants or Defense Counsel do not communicate with the Class Member regarding this Action or this Settlement. To the extent that a Class Members initiates any communication with any Defendant or Defense Counsel about this Action or the Settlement, Defendants or Defense Counsel will respond by (a) advising the Class Member to contact Class Counsel and (b) promptly advise Class Counsel about the communication including the name and any contact information of the Class Member.

4. **Remedy for Breach of this Provision.** In the event that any Defendant, Defense Counsel or any person acting on behalf of any of them, violates the provisions of this Section, any request for exclusion by any Class Member will not count toward the number in the Confidential Supplement Agreement. This remedy does not preclude Class Counsel seeking other remedies to be imposed by the Court, including requesting invalidation of a request for exclusion.

XVII. MISCELLANEOUS PROVISIONS

1. **Use & Destruction of Confidential Material.** For any material that was produced by Parties for purposes of the mediation or settlement discussions that was produced with the understanding that such material was confidential (“Confidential Material”):

1 (a) **Use:** Any Confidential Material may be used to implement or support this
2 Settlement if (i) the information disclosed is in the aggregate or (ii) provides
3 information to the Court required or requested for the Court to consider on
4 approval in connection with this Settlement so long as counsel for the Party
5 seeking to use it has required that such Confidential Material be filed under seal
6 or (iii) provides information to the Class Member about that Class Member.

7 (b) **Destruction.** A Party who has received such Confidential Material will
8 destroy such documents within 60 days after counsel for Ritchie has provided
9 written notice that: (a) the settlement proceeds (including any stock) have been
10 paid or allocated into the accounts of Class Members in the Plan, and (b) the
11 distribution of proceeds of the Settlement from the Plan has been completed for
12 Class Members who are entitled to an immediate distribution under the terms of
13 this Agreement (“Final Distribution”).

14 (c) **Retention of Certain Material.** Notwithstanding any other provision in
15 this Agreement or any prior agreement, Counsel are entitled to retain copies of all
16 pleadings, motion papers, transcripts, legal memoranda, correspondence,
17 deposition and trial exhibits, expert reports, attorney work product, consultant and
18 expert work product, and any class data used to distribute any proceeds from a
19 settlement or judgment to participants in the Plan even if such materials contain
20 confidential information subject to the understanding that Counsel will keep those
21 materials confidential and not use them for any purpose unrelated to this Action
22 or the Settlement of this Action. In addition to the archival copies of foregoing
23 documents to which Counsel for any Party is entitled to retain, Class Counsel may
24 maintain the Class Data used to provide Class Notice or to calculate allocations or
25 distributions of the Settlement to the Class, but such materials will remain
26 confidential and shall not be used for any purpose unrelated to this Action or the
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1 Settlement of this Action. Additionally, the Settlement Administrator may
2 maintain the Class Data used to provide Class Notice or to calculate distributions
3 of the Settlement to the Class for one year following Final Distribution on the
4 condition that the Settlement Administrator agrees to and does maintain such
5 materials as confidential.

6 2. **Tax Obligations and Tax Advice.** No opinion or advice concerning the
7 Tax consequences of the Settlement has been given or will be given by counsel involved in the
8 Action to the Class, nor is any representation or warranty in this regard made by virtue of this
9 Settlement. The Tax obligations of the Class and the determination thereof are the sole
10 responsibility of each Class Member, and it is understood that the Tax consequences may vary
11 depending on the particular circumstances of each Class Member. No charge or claim may be
12 asserted against any Class Member, Class Counsel, or the Settlement Fund for reimbursement of
13 any Tax, including any penalty or excise tax, imposed or sought to be imposed upon Defendants
14 in relation to or as a consequence of this Settlement.

15 3. **Provision of Valuation Reports:** In addition to the Valuation reports
16 previously provided, the Plan Administrator and/or Trustee are required to provide Class
17 Counsel with a copy of any report that provides a Valuation of Employer Stock issued by a
18 qualified independent appraiser issues an opinion on the Valuation within the later of 30 days
19 after this Agreement is fully executed or 14 days after the Valuation report is issued until the
20 Final Order is Non-Appealable.

21 4. **Binding Effect.** This Settlement Agreement will be binding upon, and
22 inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs, spousal
23 beneficiaries, and legal representatives of the Settling Parties, provided, however, that no
24 assignment by any Settling Party will operate to relieve such Party of its obligations hereunder.

25 5. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to
26 consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to
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1 cooperate to the extent necessary to effectuate and implement all terms and conditions of this
2 Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to
3 cooperate to the extent necessary to obtain the fullest possible participation of all Class Members
4 in any Settlement. The Settling Parties agree to cooperate fully with one another in seeking entry
5 of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also
6 agree to promptly execute and/or provide such documentation as may be reasonably required to
7 obtain preliminary and final approval of this Settlement.

8 6. **Modification.** This Settlement Agreement may be amended or modified
9 only by written instrument signed by Class Counsel on behalf of Plaintiff and the Class and by
10 the respective Defendant or their respective successors in interest. To the extent that such
11 modification is made after the Final Order is entered, the modification or amendment will only
12 be effective upon approval by the Court (or an appellate court).

13 7. **Representations.** This Settlement Agreement and the Supplemental
14 Confidential Agreement constitute the entire agreements among the Settling Parties (except with
15 respect to any separate settlement between Plaintiff and the Committee Defendants as to
16 Plaintiff's individual claim (Count V) against the Committee Defendants), and no
17 representations, warranties, or inducements have been made to any Party concerning the
18 Settlement other than the representations, warranties, and covenants contained and memorialized
19 in such documents (including any representations contained in the Recitals, which are
20 incorporated in the Settlement).

21 8. **Authorization.** Each signatory to this Settlement Agreement represents
22 that he or she is authorized to enter into this Settlement Agreement on behalf of the respective
23 Party.

24 9. **Counterparts.** This Settlement Agreement may be executed in one or
25 more original, photocopied, or facsimile counterparts. All executed counterparts and each of
26 them will be deemed to be one and the same instrument.

1 10. **Governing Law.** All terms of this Settlement Agreement will be governed
2 by and interpreted according to the laws of the State of California without regard to its rules of
3 conflicts of law and in accordance with the laws of the United States, except that ERISA will
4 govern (and preempt California law) to the extent applicable.

5 11. **Waiver.** The waiver by one Party of any breach of this Settlement
6 Agreement by any other Party will not be deemed a waiver of any other breach of this Settlement
7 Agreement. The provisions of this Settlement Agreement may not be waived except by a writing
8 signed by the affected Party, or counsel for that Party, or orally on the record in court
9 proceedings.

10 12. **Continuing Jurisdiction.** The Settling Parties agree to submit to the
11 jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including,
12 without limitation, disputes related to implementing and enforcing the Settlement embodied in
13 this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily
14 resolved by the Settling Parties will be submitted to the Court for final resolution (except that
15 such disputes will be subject to appeal). The Final Order will provide that the Court will have
16 continuing jurisdiction over this Settlement.

17 13. **Enforcement of this Agreement.** In the event that any Party to this
18 Settlement Agreement believes that another Party to this Agreement has breached the terms of
19 this Agreement, that Party will notify counsel for the alleged breaching Party in writing setting
20 forth the nature of the breach and the requested method to cure the breach at least 14 days prior
21 to filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly
22 breaching Party is a Class Member regardless of whether that Class Member has separate
23 counsel, Defendants must also notify Class Counsel in writing). In the event that the allegedly
24 breaching Party fails to cure the alleged breach as set forth in the written notification after 14
25 days, the other Party may then file an action to enforce the Settlement Agreement. A Party who
26 substantially prevails in any action to enforce the Settlement Agreement will be entitled to
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attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1); however, attorneys' fees and expenses will not be available to a Party that failed to provide the breaching Party written notification to cure the breach as set forth in this Paragraph.

14. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

15. **Evidentiary Effect.** Except as provided elsewhere in this Agreement, neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement or Settlement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Class Claims, or of any wrongdoing, negligence, misrepresentation, violation, or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the claims asserted by any Party; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal, or administrative proceeding in any court, administrative agency, or tribunal, including in this Action.

16. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement and the Supplemental Confidential Agreement to be a final and complete resolution of all disputes between them with respect to this Action (except with respect to the individual claim by Plaintiff in Count V and any related request or motion for attorneys' fees, costs and expenses by Plaintiff and/or Plaintiff's Counsel concerning Count V). The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement were negotiated in good faith at arm's-


length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

17. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings.

The Parties hereto, intending to be legally bound hereby, have executed this Settlement Agreement or authorized their counsel to execute this Settlement Agreement on the date set forth below.

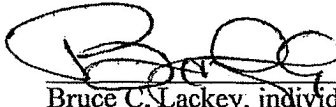
1 Agreed to by:

2 Dated: March 14, 2025

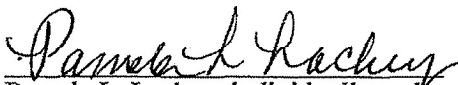
3 
4 _____
5 R. Joseph Barton (SBN 212340)
6 THE BARTON FIRM LLP
7 1633 Connecticut Ave, N.W., Suite 200
8 Washington, DC 20009
9 Tel: (202) 734-7046
10 Email: jbarton@thebartonfirm.com

11 *Attorneys for Plaintiff*


Dated: March __, 2025

12 
13 _____
14 Bruce C. Lackey, individually and as a
15 Co-trustee of the Bruce Lackey and
16 Pamela Lackey Family Trust dated
17 March 31, 1987

Dated: March 21, 2025

18 
19 _____
20 Pamela L. Lackey, individually and as a
21 Co-trustee of the Bruce Lackey and
22 Pamela Lackey Family Trust dated
23 March 31, 1987

Dated: March 21, 2025

24 
25 _____
26 Lackey Family Trust
27 By: Bruce Lackey [Name]
28 Position: Co-Trustee

Dated: March __, 2025

29 _____
30 Cole Scharton

Dated: March __, 2025

31 _____
32 Rick Roush,

Dated: March __, 2025

33 _____
34 Del Thacker,

Dated: March __, 2025

1 Agreed to by:

2 Dated: March 14, 2025

Dated: March __, 2025

3
4
5 R. Joseph Barton (SBN 212340)
6 THE BARTON FIRM LLP
7 1633 Connecticut Ave, N.W., Suite 200
8 Washington, DC 20009
9 Tel: (202) 734-7046
10 Email: jbarton@thebartonfirm.com

Bruce C. Lackey, individually and as a
Co-trustee of the Bruce Lackey and
Pamela Lackey Family Trust dated
March 31, 1987

Dated: March __, 2025

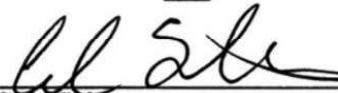
11 *Attorneys for Plaintiff*

12
13 Pamela L. Lackey, individually and as a
14 Co-trustee of the Bruce Lackey and
15 Pamela Lackey Family Trust dated
16 March 31, 1987

Dated: March __, 2025

17
18 Lackey Family Trust
19 By: _____ [Name]
20 Position: _____

Dated: March 21, 2025

21
22 
23 Cole Scharton

Dated: March __, 2025

24 Rick Roush,

Dated: March __, 2025

25 Del Thacker,

Dated: March __, 2025

Agreed to by:

Dated: March 14, 2025

Dated: March __, 2025

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March 31, 1987

Dated: March __, 2025

Attorneys for Plaintiff

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Co-trustee of the Bruce Lackey and
Pamela Lackey Family Trust dated
March 31, 1987

Dated: March __, 2025

Lackey Family Trust
By: _____ [Name]
Position: _____

Dated: March __, 2025

Cole Scharton

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Dated: March 20 2025

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March 31, 1987

Dated: March ___, 2025

Lackey Family Trust
By: _____ [Name]
Position: _____

Dated: March ___, 2025

Cole Scharton

Dated: March ___, 2025

Rick Roush,

Dated: March ___, 2025

Del Thacker
Del Thacker,

Dated: March 21, 2025

 March 19, 2025
Richard DeYoung,

Dated: March __, 2025

The Administrative Committee of the People
Business Employee Stock Ownership Plan
By: _____[Name]
Position: _____

Dated: March __, 2025

Ritchie Trucking Service Holdings, Inc.
By: _____[Name]
Position: _____

Dated: March __, 2025

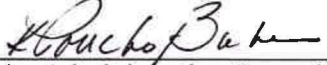
People Business Employee Stock Ownership
Plan
By: _____[Name]
Position: _____

Dated: March __, 2025

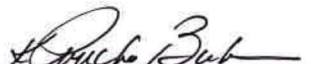
Miguel Paredes

Richard DeYoung,

Dated: March __, 2025


The Administrative Committee of the People
Business Employee Stock Ownership Plan
By: K. DONATO BAKER [Name]
Position: CEO/Gen. Counsel

Dated: March 24, 2025


Ritchie Trucking Service Holdings, Inc.
By: K. DONATO BAKER [Name]
Position: CEO/Gen. Counsel

Dated: March 24, 2025


People Business Employee Stock Ownership
Plan
By: K. DONATO BAKER [Name]
Position: CEO/Gen. Counsel

Dated: March __, 2025

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Richard DeYoung,

Dated: March __, 2025

The Administrative Committee of the People
Business Employee Stock Ownership Plan
By: _____ [Name]
Position: _____

Dated: March __, 2025

Ritchie Trucking Service Holdings, Inc.
By: _____ [Name]
Position: _____

Dated: March __, 2025

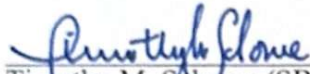
People Business Employee Stock Ownership
Plan
By: _____ [Name]
Position: _____

Dated: March 20, 2025


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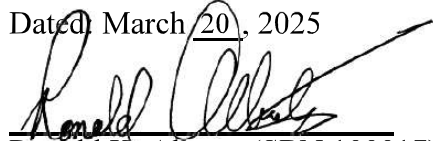

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