

1 JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
2 POLINA BRANDLER (SBN 269086)
ppecherskaya@hammondlawpc.com
3 ARI CHERNIAK (SBN 290071)
acherniak@hammondlawpc.com
4 HAMMONDLAW, P.C.
5 1201 Pacific Avenue, Suite 600
Tacoma, WA 98402
6 Telephone: (310) 601-6766
7 Facsimile: (310) 295-2385

8 Attorneys for Plaintiffs
YESENIA GUTIERREZ and KATHY CHAN

9 ERIC AKIRA TATE (BAR NO. 178719)
ETate@mofocom
10 BYUNG-KWAN PARK (BAR NO. 306719)
BPark@mofocom
11 WILLIAM N. LAWThER (BAR NO. 335000)
WLawther@mofocom
12 MORRISON & FOERSTER LLP
13 425 Market Street
San Francisco, CA 94105-2482
14 Telephone: 415.268.7000
Facsimile: 415.268.7522

15 Attorneys for Defendant
16 ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.

17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN BERNARDINO

20 YESENIA GUTIERREZ AND KATHY
21 CHAN, individually and on behalf of all others
similarly situated,

22 Plaintiffs,

23 v.

24 ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC., a California Corporation,

25 Defendant.
26
27
28

Case No. CIVSB2300014

(Assigned for All Purposes to the Honorable
Christian Towns Dept. S26 - SBJC)

**CLASS AND PAGA SETTLEMENT
AGREEMENT AND RELEASE**

Date Action Filed: January 4, 2023
Trial Date: Not Yet Set

1 This Class and PAGA Settlement Agreement and Release (the “Agreement”) is entered
2 into by and between plaintiffs Yesenia Gutierrez (“Gutierrez”) and Kathy Chan (“Chan”)
3 (together, “Plaintiffs”), on the one hand, individually and on behalf of all persons who are
4 members of the classes to be certified for settlement purposes only as provided for herein and the
5 PAGA Groups and the State of California, and defendant Environmental Systems Research
6 Institute, Inc. (“Defendant” or “Esri”), on the other hand, subject to the approval of the Court. In
7 consideration of the promises and mutual covenants and agreements herein contained, Plaintiffs
8 and Defendant (collectively, the “Parties”) hereby covenant and agree as follows:

9 **1. RECITALS**

10 1.1 On November 15, 2022, Gutierrez filed a putative class action complaint (the
11 “Original Complaint”) against Defendant in the Superior Court of the State of California, County
12 of San Bernardino, entitled *Yesenia Gutierrez v. Environmental Systems Research Institute, Inc.*,
13 Case No. CIVSB2225691 (the “Original Action”). The Original Complaint alleged five causes of
14 action for (1) failure to pay overtime wages; (2) failure to pay all wages due upon termination; (3)
15 failure to issue accurate itemized wage statements; (4) failure to reimburse business expenses; and
16 (5) unfair, unlawful, or fraudulent business practices. With respect to (1)-(3), the Original
17 Complaint alleged that Defendant misclassified employees in computer software roles. With
18 respect to (4), the Original Complaint alleged that employees, whether exempt or non-exempt,
19 were not reimbursed for all necessary business expenses.

20 1.2 Due to issues with the filing service, Gutierrez did not receive conformed copies of
21 the Original Complaint until approximately March 2023. Because of this, Gutierrez filed an
22 identical complaint on January 4, 2023 (the “Complaint”), alleging the same five causes of action
23 as the Original Complaint, entitled *Yesenia Gutierrez v. Environmental Systems Research*
24 *Institute, Inc.*, Case No. CIVSB2300014 (the “Action”). After conferring with Esri, Gutierrez and
25 Esri agreed to dismiss the Original Action and that Gutierrez would amend the Complaint to
26 extend the class period back to November 15, 2018.

27 1.3 On April 11, 2023, Gutierrez filed a First Amended Complaint, extending the class
28 period back to November 15, 2018. The First Amended Complaint added Chan as a named

1 plaintiff and included an additional cause of action seeking civil penalties under the Labor Code
2 Private Attorneys General Act of 2004 (“PAGA”), in addition to the five causes of action alleged
3 in the Complaint.

4 1.4 Prior to the filing of the First Amended Complaint, Gutierrez filed her first PAGA
5 letter against Defendant on October 12, 2022, alleging the same reimbursement claim as in the
6 Original Complaint. In her first PAGA letter, Plaintiff named her employer as “ESRI Global,
7 Inc.” She amended her PAGA letter on October 31, 2022 to correct her employer’s name to
8 Environmental Systems Research Institute, Inc. (“Esri, Inc.”). On January 9, 2023, Plaintiffs filed
9 a second amended PAGA letter to include Chan as an alleged representative and to allege claims
10 for (1) failure to pay overtime wages; (2) failure to pay all wages due upon termination; and (3)
11 failure to issue accurate itemized wage statements, as alleged in the Complaint. On April 17,
12 2024, Plaintiffs filed a third amended PAGA letter, seeking to represent all Esri employees
13 classified as exempt in the State of California who have been paid allegedly on an hourly basis
14 and adding claims for meal and rest break violations.

15 1.5 On October 1, 2024, the Parties participated in a mediation conducted by
16 Stephanie S. Chow of Mediated Negotiations. Following the mediation, the Parties agreed to
17 resolve the Action, memorializing the key terms of the settlement in a memorandum of
18 understanding fully executed as of December 9, 2024. As part of the settlement, the Parties
19 agreed that Defendant shall stipulate to the filing of Plaintiffs’ Second Amended Complaint,
20 which cover claims included in Plaintiffs’ third amended PAGA letter, including the addition of
21 claims for alleged failure to provide meal breaks and alleged failure to permit and authorize rest
22 breaks. The Parties filed this stipulation with the Second Amended Complaint on January 21,
23 2025.

24 1.6 In preparation for the mediation on October 1, 2024, Plaintiffs asked for and
25 Defendant provided substantial informal discovery, including production of various policies,
26 employee headcounts and pay period counts relevant to various claims, time and payroll data,
27 expense reimbursement data, and other information requested by Plaintiffs.
28

1 1.7 In these and other ways, the Parties investigated the facts and analyzed the relevant
2 legal issues regarding the claims and defenses in the Action. Based on this investigation and
3 analysis, Plaintiffs believe the Action has merit, while Defendant believes the Action has no
4 merit.

5 1.8 The Parties have each considered the uncertainties of continued litigation and the
6 benefits to be obtained under the proposed settlement, and have considered the costs, risks, and
7 delays associated with the continued prosecution of the Action and the likely appeals of any
8 rulings in favor of either Plaintiffs or Defendant. At all times, the Parties' settlement negotiations
9 have been non-collusive, adversarial, and at arm's length.

10 1.9 It is the Parties' intention and the objective of this Agreement to avoid the costs of
11 further litigation and trial, and to settle and dispose of, fully and completely and forever, the
12 claims released herein and described below.

13 **2. DEFINITIONS**

14 As used in this Agreement, the terms set forth in this Section 2 shall have the meanings
15 ascribed to them below.

16 2.1 **Action.** "Action" means the above-captioned action entitled *Yesenia Gutierrez*
17 *and Kathy Chan v. Environmental Systems Research Institute, Inc.*, Case No. CIVSB2300014,
18 currently pending in the Superior Court of the State of California, County of San Bernardino.

19 2.2 **Agreement.** "Agreement" means this Class and PAGA Settlement Agreement and
20 Release, including all Exhibits referred to herein and attached hereto.

21 2.3 **Alleged Misclassification Class.** "Alleged Misclassification Class" means all
22 current and former employees of Defendant in the State of California subject to Defendant's Bank
23 Time Policy and whom Defendant classified as exempt at any time from November 15, 2018 to
24 the date on which Plaintiffs' motion for Preliminary Approval of this Settlement is first scheduled
25 to be heard by the Court.

26 2.4 **Alleged Misclassification PAGA Group.** "Alleged Misclassification PAGA
27 Group" means all current and former employees of Defendant in the State of California subject to
28 Defendant's Bank Time Policy and whom Defendant classified as exempt at any time from

1 February 5, 2022 to the date on which Plaintiffs’ motion for Preliminary Approval of this
2 Settlement is first scheduled to be heard by the Court.

3 2.5 **Alleged Reimbursement Class.** “Alleged Reimbursement Class” means all
4 current and former employees (whether exempt or non-exempt) of Defendant in the State of
5 California from March 16, 2020 to the date on which Plaintiffs’ motion for Preliminary Approval
6 of this Settlement is first scheduled to be heard by the Court.

7 2.6 **Alleged Reimbursement PAGA Group.** “Alleged Reimbursement PAGA
8 Group” means all current and former employees (whether exempt or non-exempt) of Defendant in
9 the State of California from February 5, 2022 to the date on which Plaintiffs’ motion for
10 Preliminary Approval of this Settlement is first scheduled to be heard by the Court.

11 2.7 **Allocations.** “Allocations” means the amounts to be paid from the Net Settlement
12 Sum to the Settlement Class Members and from the PAGA Funds to the PAGA Group Members,
13 as provided in Section 4.5 of this Agreement.

14 2.8 **Chan.** “Chan” means plaintiff Kathy Chan.

15 2.9 **Class Counsel.** “Class Counsel” means the law firm of HammondLaw, P.C.

16 2.10 **Class Members or Classes.** “Class Members” or “Classes” means all members of
17 the Alleged Misclassification Class and Alleged Reimbursement Class.

18 2.11 **Class Notice.** “Class Notice” means the Notice of Settlement of Class Action to
19 be mailed to Class Members. The Class Notice shall be substantially in the form of **Exhibit A**
20 hereto.

21 2.12 **Class Settlement Award.** “Class Settlement Award” means the amount that the
22 Settlement Administrator determines is owed to a Class Member pursuant to the Plan of
23 Allocation described in Section 4.5, below.

24 2.13 **Complaint.** “Complaint” means the complaint filed by Plaintiff Gutierrez in the
25 Action on January 4, 2023.

26 2.14 **Complaints.** “Complaints” means the Original Complaint, the Complaint, the
27 First Amended Complaint, and the Second Amended Complaint.
28

1 2.15 **Court.** “Court” means the Superior Court of the State of California, County of
2 San Bernardino.

3 2.16 **Defendant.** “Defendant” means defendant Environmental Systems Research
4 Institute, Inc.

5 2.17 **Defendant’s Counsel.** “Defendant’s Counsel” means the law firm of Morrison &
6 Foerster LLP.

7 2.18 **Effective Date.** “Effective Date” means either (a) the date sixty (60) calendar
8 days after entry of the Final Judgment and Order Approving Settlement, if no motions for
9 reconsideration and no appeals or other efforts to obtain review have been filed, or (b) in the
10 event that a motion for reconsideration, an appeal or other effort to obtain review of the Final
11 Judgment and Order Approving Settlement is filed, the date sixty (60) calendar days after such
12 reconsideration, appeal, or review has been finally concluded and is no longer subject to review,
13 whether by appeal, petition for rehearing, petition for review, or otherwise.

14 2.19 **Fee and Expense Award.** “Fee and Expense Award” means such award of
15 attorneys’ fees and costs/expenses as the Court may authorize to be paid to Class Counsel for the
16 services they have rendered to Plaintiffs, the settlement Classes, and the PAGA Groups.

17 2.20 **Fairness Hearing or Final Approval Hearing.** “Fairness Hearing” or “Final
18 Approval Hearing” means the hearing at or after which the Court will make a final decision on
19 whether to grant Final Approval of the Settlement as fair, reasonable, and adequate, implement
20 the terms of the Agreement, and enter Judgment. The Fairness Hearing shall be scheduled for a
21 date approximately ninety (90) calendar days after the Preliminary Approval Date, or as soon as
22 thereafter as the Court is available.

23 2.21 **Final Approval or Judgment.** “Final Approval” or “Judgment” means the Final
24 Judgment and Order Approving Settlement finally certifying the Settlement Classes and
25 approving the Settlement and this Agreement, as contemplated in Section 4.7 of this Agreement.

26 2.22 **First Amended Complaint.** “First Amended Complaint” means the amended
27 complaint filed in this Action on April 11, 2023.
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1 2.23 **General Release Payments.** “General Release Payments” means the
2 compensation paid to Plaintiffs in consideration for their general release of their individual claims
3 as set forth in Section 5.6, below, and in recognition of their effort and work in prosecuting the
4 Action on behalf of the Class Members and negotiating the Settlement, separate and apart from
5 the Class Settlement Award and PAGA Settlement Award they will receive, to be paid to them
6 from the Gross Settlement Amount.

7 2.24 **Gross Settlement Amount.** “Gross Settlement Amount” means Four Million
8 Nine Hundred Ten Thousand Dollars and No Cents (\$4,910,000.00), which is the maximum total
9 amount that Defendant shall be required to pay for any and all purposes under this Agreement.
10 The following shall be paid from the Gross Settlement Amount pursuant to the Plan of Allocation
11 set forth in Section 4.5, below: (a) all Class Settlement Awards, (b) the PAGA Settlement
12 Amounts, (c) the Fee and Expense Award, (d) the General Release Payments, (e) the Settlement
13 Administration Costs, and (f) Withholdings and Taxes. Under no other circumstances shall
14 Defendant pay any sum in excess of the Gross Settlement Amount in connection with the
15 Settlement.

16 2.25 **Gutierrez.** “Gutierrez” means plaintiff Yesenia Gutierrez.

17 2.26 **LWDA.** “LWDA” means the California Labor and Workforce Development
18 Agency.

19 2.27 **Net Settlement Sum.** “Net Settlement Sum” means the Gross Settlement Amount
20 less the following: (a) the PAGA Settlement Amount, (b) the Fee and Expense Award, (c) the
21 General Release Payments, (d) the Settlement Administration Costs, and (e) Withholdings and
22 Taxes. 70% of the Net Settlement Sum (including and subject to Withholdings and Taxes) shall
23 be allocated to Settlement Class Members of the Alleged Misclassification Class, and the
24 remaining 30% (not including and not subject to Withholdings and Taxes) shall be allocated to
25 Settlement Class Members of the Alleged Reimbursement Class.

26 2.28 **Notice of Pay Periods.** “Notice of Pay Periods” means the notice to be mailed to
27 Class Members as an enclosure with the Class Notice notifying each Class Member and/or PAGA
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1 Group Member of the number of Pay Periods calculated for the Class Member and/or PAGA
2 Group Member. The Notice of Pay Periods shall be substantially in the form of **Exhibit B** hereto.

3 2.29 **Notice Response Deadline.** “Notice Response Deadline” means forty-five (45)
4 calendar days from the date of initial mailing of the Class Notice, or such other date set by the
5 Court in the Preliminary Approval Order.

6 2.30 **Original Action.** “Original Action” means the putative class action Gutierrez
7 filed against Defendant in the Superior Court of the State of California, County of San
8 Bernardino, entitled *Yesenia Gutierrez v. Environmental Systems Research Institute, Inc.*, Case
9 No. CIVSB2225691, which was dismissed.

10 2.31 **Original Complaint.** “Original Complaint” means the complaint filed by
11 Gutierrez in the Original Action on November 15, 2022.

12 2.32 **PAGA.** “PAGA” means the Labor Code Private Attorneys General Act of 2004
13 (Lab. Code, § 2698, et seq.).

14 2.33 **PAGA Fund.** “PAGA Fund” means 25% of the PAGA Settlement Amount,
15 which is the portion to be paid to PAGA Group Members. 70% of the PAGA Fund shall be
16 allocated to members of the Alleged Misclassification PAGA Group, and the remaining 30%
17 shall be allocated to members of the Alleged Reimbursement PAGA Group.

18 2.34 **PAGA Group Members or PAGA Groups.** “PAGA Group Members” or
19 “PAGA Groups” means all members of the Alleged Misclassification PAGA Group and Alleged
20 Reimbursement PAGA Group.

21 2.35 **PAGA Notices.** “PAGA Notices” means the PAGA notice filed by Plaintiff
22 Gutierrez with the LWDA regarding Defendant on or about October 12, 2022, the amended
23 PAGA notice filed by Plaintiff Gutierrez with the LWDA regarding Defendant on or about
24 October 31, 2022, the second amended PAGA notice filed by Plaintiff Gutierrez with the LWDA
25 regarding Defendant on or about January 9, 2023, and the third amended PAGA notice filed by
26 Plaintiffs with the LWDA regarding Defendant on or about April 17, 2024.

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1 2.36 **PAGA Period.** “PAGA Period” means from February 5, 2022 to and including
2 the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled
3 to be heard by the Court

4 2.37 **PAGA Settlement Amount.** “PAGA Settlement Amount” means One Hundred
5 Thousand Dollars and No Cents (\$100,000.00) or such other amount approved by the Court, 75%
6 of which (\$75,000.00) is to be paid to the LWDA and 25% of which (\$25,000.00) is to form the
7 PAGA Fund to be paid to PAGA Group Members. The PAGA Settlement Amount is to be paid
8 for resolution of the PAGA claims alleged in the Action, and which are included in the Released
9 PAGA Claims.

10 2.38 **PAGA Settlement Award.** “PAGA Settlement Award” means the amount that
11 the Settlement Administrator determines is owed to a PAGA Group Member pursuant to the Plan
12 of Allocation described in Section 4.5, below.

13 2.39 **Parties.** “Parties” means plaintiffs Yesenia Gutierrez and Kathy Chan, on the one
14 hand, individually and on behalf of all Settlement Class Members, and Plaintiffs on behalf of the
15 PAGA Group and the State of California, and defendant Environmental Systems Research
16 Institute, Inc., on the other hand.

17 2.40 **Pay Periods.** “Pay Periods” means the number of pay periods during which a
18 Class Member and/or PAGA Group Member was employed by Esri in California for at least one
19 day. Pay Periods as provided in this Agreement shall be calculated according to Defendant’s
20 records. Settlement Class Members may dispute the number of Pay Periods they had during the
21 Settlement Period by completing and returning the Notice of Pay Periods included with the Class
22 Notice, which shall be substantially in the form of **Exhibit B** hereto.

23 2.41 **Plaintiffs.** “Plaintiffs” means plaintiffs Yesenia Gutierrez and Kathy Chan.

24 2.42 **Plan of Allocation.** “Plan of Allocation” means the manner in which the Net
25 Settlement Sum shall be allocated to Settlement Class Members and the PAGA Fund shall be
26 allocated to the LWDA and PAGA Group Members as set forth in Section 4.5, below.

27 2.43 **Preliminary Approval or Preliminary Approval Order.** “Preliminary
28 Approval” or “Preliminary Approval Order” means the order preliminarily approving this

1 Settlement, which shall, among other things, provisionally certify the Settlement Classes for
2 purposes of this Settlement only; determine that Plaintiffs adequately represent the Settlement
3 Classes and shall be their class representatives; appoint Class Counsel as counsel for the
4 Settlement Classes; approve Settlement Services, Inc. as the Settlement Administrator; approve
5 the content and distribution of the Class Notice to the Class Members; set the Request for
6 Exclusion Deadline and the deadline for objecting to the Settlement; and set the date for the
7 Fairness Hearing, all as contemplated in Section 4.1, below.

8 **2.44 Preliminary Approval Date.** “Preliminary Approval Date” means the date upon
9 which the Court enters the Preliminary Approval Order.

10 **2.45 Released Claims.** “Released Claims” means all claims, debts, liabilities,
11 demands, obligations, damages, and actions or causes of action of any kind, including wage and
12 hour claims related to allegations of employee misclassification and failure to reimburse business
13 expenses, arising before or on the end date of the Settlement Period and that were alleged in the
14 Original Complaint, the Complaint, the First Amended Complaint, and the Second Amended
15 Complaint or any of the PAGA Notices or could have reasonably been alleged against any of the
16 Released Parties based on the facts alleged in any of the Complaints or any of the PAGA Notices.
17 Specifically, for the Settlement Class Members of the Alleged Misclassification Class, released
18 claims include, without limitation, claims under Labor Code sections 201-203, 226, 226(a),
19 226(e), 226.7, 510, 512, 1194, and 2698 et seq.; Business and Professions Code section 17200 et
20 seq.; and Code of Civil Procedure section 1021.5. For the Settlement Class Members of the
21 Alleged Reimbursement Class, released claims include, without limitation, claims under Labor
22 Code sections 2802 and any derivative claims; Business and Professions Code section 17200 et
23 seq.; and Code of Civil Procedure section 1021.5.

24 **2.46 Released PAGA Claims.** “Released PAGA Claims” means all claims that were
25 or could have been asserted pursuant to PAGA arising out of or related to the Released Claims
26 arising before or on the end date of the PAGA Period. Specifically, for the Alleged
27 Misclassification PAGA Group, released PAGA claims include those based on, without
28 limitation, alleged violations of Labor Code sections 201-203, 226, 226(a), 226(e), 226.7, 510,

1 512, 1194, and 2698 et seq. For the Alleged Reimbursement PAGA Group, released PAGA
2 claims include those based on, without limitation, alleged violations of Labor Code sections 2802
3 and any derivative Labor Code claims. The Released PAGA Claims are released by both the
4 State of California and the PAGA Group Members as part of this Settlement.

5 **2.47 Released Parties.** “Released Parties” means Defendant; each of its respective
6 present, former, or future parents, subsidiaries, affiliates, divisions, corporations in common
7 control, predecessors, successors, and assigns; each of its respective present, past, or future
8 officers, directors, employees, partners (both general and limited), shareholders, agents, attorneys,
9 insurers, and any other successors, assigns, or legal representatives; and any other individual or
10 entity which could be liable for any of the Released Claims or Released PAGA Claims.

11 **2.48 Request for Exclusion.** “Request for Exclusion” means a written request made by
12 a Class Member to the Settlement Administrator seeking to be excluded from the Settlement
13 Class.

14 **2.49 Request for Exclusion Deadline.** “Request for Exclusion Deadline” means
15 forty-five (45) calendar days from the date of initial mailing of the Class Notice, or such other
16 date set by the Court in the Preliminary Approval Order for submitting a Request for Exclusion to
17 the Settlement Administrator.

18 **2.50 Second Amended Complaint.** “Second Amended Complaint” means the Second
19 Amended Complaint attached to the Parties’ stipulation and proposed order filed on January 21,
20 2025.

21 **2.51 Settlement.** “Settlement” means this Agreement and all actions taken pursuant to
22 and in furtherance of this Agreement.

23 **2.52 Settlement Administration Costs.** “Settlement Administration Costs” means the
24 amount approved by the Court to be paid for the services of the Settlement Administrator to
25 perform the Settlement Administrator Duties, as specified in Section 4.2.2, below, estimated not
26 to exceed Fifty-Seven Thousand Two Hundred Fifty Dollars and No Cents (\$57,250.00).

27 **2.53 Settlement Administrator.** “Settlement Administrator” means Settlement
28 Services, Inc. or such professional, third-party administrator as may be approved by the Court,

1 which shall be responsible for administering the Settlement pursuant to the terms of the
2 Agreement, the Class Notice, the Preliminary Approval Order, and the Judgment. The Settlement
3 Administrator shall agree to confidentiality terms as may be required by Defendant regarding
4 personnel, payroll, and any other data provided to the Settlement Administrator and shall work
5 with Class Counsel and Counsel for Defendant to implement and administer appropriate fraud-
6 prevention policies. The Settlement Administration Costs shall be paid out of the Gross
7 Settlement Amount.

8 **2.54 Settlement Classes.** “Settlement Classes” means Plaintiffs and all Settlement
9 Class Members.

10 **2.55 Settlement Class Members.** “Settlement Class Members” means each Class
11 Member who does not submit a valid and timely Request for Exclusion.

12 **2.56 Settlement Fund.** “Settlement Fund” means the fund established and
13 administered by the Settlement Administrator for the purpose of receiving and disbursing
14 amounts to be paid to Settlement Class Members, PAGA Group Members, the LWDA, Plaintiffs,
15 Class Counsel, and the Settlement Administrator pursuant to this Agreement. The Settlement
16 Fund shall be funded by Defendant following the Effective Date in accordance with Section 4.8.1,
17 below.

18 **2.57 Settlement Period.** “Settlement Period” means from November 15, 2018 to and
19 including the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first
20 scheduled to be heard by the Court.

21 **2.58 Withholdings and Taxes.** “Withholdings and Taxes” means all withholdings
22 from the Class Settlement Awards required by law plus all federal, state, and local employment
23 payroll taxes due in regard to the wages portion of Class Settlement Award, owed by a Settlement
24 Class Member of the Alleged Misclassification Class or by Defendant. Withholdings and Taxes
25 shall be deducted from the portion of the Net Settlement Sum allocated to the Alleged
26 Misclassified Class.

1 **3. SETTLEMENT TERMS**

2 **3.1 Stay of Proceedings.** Subject to Court approval, the Parties agree to the entry of a
 3 formal stay of all proceedings in this Action, including with respect to California Code of Civil
 4 Procedure section 583.310, except such proceedings as may be necessary to implement and
 5 complete the settlement, including for the sole and limited purpose of Plaintiffs filing the motion
 6 for Preliminary Approval (as set forth in Section 4.1).

7 **3.2 Certification of the Settlement Class.** For purposes of settlement and the
 8 proceedings contemplated by this Agreement only, the Settlement Classes shall be provisionally
 9 certified and consist of Plaintiffs and all Settlement Class Members.

10 **3.3 Decertification of the Settlement Class If Settlement Not Approved.**
 11 Defendant does not consent to certification of the Settlement Classes or any settlement class for
 12 any purpose other than to effectuate the Settlement of the Action. If, for any reason, the
 13 Settlement does not become final, any certification of any Settlement Classes will be vacated and
 14 the Parties will be returned to their positions with respect to the Action as if the Agreement had
 15 not been entered into. In the event that Final Approval is not achieved: (a) any Court order
 16 preliminarily approving the certification of any class contemplated by this Agreement shall be
 17 null, void, and vacated, and shall not be used or cited thereafter by any person or entity; (b) the
 18 fact of the Settlement reflected in this Agreement, that Defendant did not oppose the certification
 19 of the Settlement Class under this Agreement, or that the Court preliminarily approved the
 20 certification of the Settlement Class, shall not be used or cited thereafter by any person or entity
 21 in any manner whatsoever, including without limitation any contested proceeding relating to the
 22 certification of any class; and (c) the Parties agree that they will be returned to their status quo
 23 ante positions, except that the Second Amended Complaint shall remain the operative complaint
 24 in the Action, with Defendant reserving all rights. In the event the terms and conditions of this
 25 Agreement are substantially modified by the Court, Plaintiffs and Defendant reserve the right to
 26 declare this Agreement null and void, in their sole discretion, within fourteen (14) calendar days
 27 after such modification; provided, however, the Party exercising this right shall be solely
 28

1 responsible for the Settlement Administrator's expenses incurred through the date of that Party's
2 exercise, not to exceed the amount approved by the Court in the Preliminary Approval Order.

3 **3.4 Settlement Payment by Defendant.** In full settlement of the Released Claims
4 and Released PAGA Claims and following the Effective Date, Defendant shall deliver the Gross
5 Settlement Amount to the Settlement Administrator for establishment of the Settlement Fund, in
6 accordance with Section 4.8.1, below.

7 **3.5 Attorneys' Fees and Costs.** Defendant agrees not to oppose Plaintiffs'
8 application for attorneys' fees up to One Million Six Hundred Thirty-Six Thousand Six Hundred
9 Sixty-Six Dollars and Sixty-Seven Cents (\$1,636,666.67) (33.33% of the Gross Settlement
10 Amount) plus actual costs and expenses, subject to the Court's approval. Plaintiffs agree not to
11 petition the Court for more than One Million Six Hundred Thirty-Six Thousand Six Hundred
12 Sixty-Six Dollars and Sixty-Seven Cents (\$1,636,666.67) for attorneys' fees or more than Fifty
13 Thousand Dollars and Zero Cents (\$50,000.00) for costs, and in no event shall Defendant be
14 liable for any attorneys' fees or costs in excess of these amounts. The Fee and Expense Award
15 shall represent payment for all claims for Class Counsel's attorneys' fees and costs, past and
16 future, incurred in the Action. The Fee and Expense Award shall be paid from the Gross
17 Settlement Amount, and Defendant shall not otherwise be required to pay for any portion of Class
18 Counsel's attorneys' fees, costs, or expenses. The Fee and Expense Award shall be paid to Class
19 Counsel following the Effective Date, in accordance with Section 4.8.2, below. An award by the
20 Court of attorneys' fees or costs that is less than the amounts applied for will not be grounds for
21 Plaintiffs or Class Counsel to challenge or withdraw from the Settlement, and any amounts not
22 awarded in costs or fees will be included in the Net Settlement Sum.

23 **3.6 General Release Payments.** In consideration of their general release of their
24 individual claims as set forth in Section 5.6, below and in recognition of their effort and work in
25 prosecuting the Action on behalf of the Class Members and negotiating the Settlement, Gutierrez
26 shall receive compensation in the sum of Seven Thousand Five Hundred Dollars and No Cents
27 (\$7,500.00), and Chan shall receive compensation in the sum of Seven Thousand Five Hundred
28 Dollars and No Cents (\$7,500.00). These General Release Payments are to be paid from the

1 Gross Settlement Amount and reported on IRS Form 1099-MISC. The General Release
2 Payments are separate from and in addition to the Class Settlement Awards and PAGA
3 Settlement Awards to be paid to Plaintiffs as Settlement Class Members and PAGA Group
4 Members. It will not be grounds for Plaintiffs or Class Counsel to challenge or withdraw from
5 the Settlement if the Court denies Plaintiffs' application for the General Release Payments or
6 awards a lesser amount than that for which Plaintiffs apply, and any amounts not awarded in the
7 General Release Payments will be included in the Net Settlement Sum.

8 3.7 **PAGA Settlement Amount.** Plaintiffs shall seek approval from the Court for a
9 total payment of One Hundred Thousand Dollars and No Cents (\$100,000.00) for resolution of
10 the PAGA claims alleged in the Complaint, the PAGA Notices, or any of them. 75% of the
11 PAGA Settlement Amount shall be paid to the LWDA, and 25% of the PAGA Settlement
12 Amount shall form the PAGA Fund to be paid to PAGA Group Members in accordance with the
13 Plan of Allocation set forth in Section 4.5, below.

14 **4. CLASS SETTLEMENT PROCEDURES**

15 4.1 **Preliminary Approval.** As soon as practicable, Plaintiffs shall move for
16 Preliminary Approval of the Settlement in the Action. Plaintiffs' motion shall request the Court
17 to:

18 4.1.1 Preliminarily approve this Agreement as fair, reasonable, and adequate;

19 4.1.2 Preliminarily approve the form, manner, and content of the Class Notice
20 described in Section 4.2 and attached as **Exhibit A**, and the form, manner, and content of the
21 Notice of Pay Periods described in Section 2.28 and attached as **Exhibit B**;

22 4.1.3 Set deadlines for the Settlement Administrator to provide the Class Notice,
23 and for Class Members to opt out of or object to the Settlement;

24 4.1.4 Set the date and time for the Fairness Hearing;

25 4.1.5 Provisionally certify the Settlement Classes;

26 4.1.6 Stay all proceedings except for such proceedings as may be necessary to
27 implement and complete the Settlement, including for the sole and limited purpose of Plaintiffs
28 filing the motion for Preliminary Approval, until Final Approval;

1 4.1.7 Appoint Plaintiffs as class representatives for the Settlement Classes for
2 settlement purposes only;

3 4.1.8 Appoint Class Counsel as class counsel for settlement purposes only; and

4 4.1.9 Approve Settlement Services, Inc. as the Settlement Administrator.

5 The Preliminary Approval Order shall be substantially the same as the proposed order
6 attached as **Exhibit C**. Class Counsel shall draft the preliminary approval papers and give
7 Defendant’s Counsel a draft of the papers to review at least three (3) court days before they are
8 filed.

9 4.2 **Class Notice.** Subject to Court approval, the Parties agree that as soon as
10 practicable after entry of the Preliminary Approval Order, the Settlement Administrator shall
11 provide notice to the Settlement Classes pursuant to the following procedures:

12 4.2.1 **Information Regarding Class Members.** Within fifteen (15) business
13 days following entry of the Preliminary Approval Order, Defendant will provide the Settlement
14 Administrator the following information with respect to each Class Member: (i) name, (ii) last
15 known residence address, (iii) last known telephone number, (iv) Social Security number, and
16 (v) the number of Pay Periods worked during the Settlement Period and the PAGA Period.
17 Defendant will provide this information in two spreadsheets, one for the Alleged
18 Misclassification Class and the other for the Alleged Reimbursement Class. The information
19 Defendant provides to the Settlement Administrator, along with any updated contact information
20 identified by the Settlement Administrator as set forth in Sections 4.2.2 and 4.2.3, below, shall be
21 used solely to administer the Class Notice and Plan of Allocation process described herein, shall
22 remain confidential, and shall not be disclosed to anyone, except pursuant to the express written
23 authorization of Defendant or the individual in question, by order of the Court, or to the extent
24 necessary to fulfill the Settlement Administrator’s reporting obligations hereunder.

25 4.2.2 **Settlement Administrator Duties.** The Settlement Administrator’s duties
26 shall include, without limitation: (i) printing the Class Notice (including exhibits thereto) and
27 mailing it to the Class Members as directed by the Court; (ii) taking all steps reasonably
28 necessary to ensure Class Members timely receive the Class Notice; (iii) resolving any disputes

1 by Settlement Class Members regarding their number of Pay Periods; (iv) taking receipt of and
2 safeguarding the Gross Settlement Amount; (v) calculating and distributing Class Settlement
3 Awards, PAGA Settlement Awards, the portion of the PAGA Settlement Amount payable to the
4 LWDA, the General Release Payments, and the Fee and Expense Award, provided such amounts
5 are approved by the Court; (vi) calculating and remitting all Withholdings and Taxes; (vii) issuing
6 IRS Forms W-2 and 1099-MISC, as applicable; and (viii) filing such other reports with the taxing
7 authorities as required by law, together with such other tasks as the Parties may mutually agree or
8 the Court may order the Settlement Administrator to perform. The Settlement Administrator shall
9 take all reasonable steps to ensure that (a) the highest percentage of Class Members receive the
10 Class Notice; (b) Class Members who wish to participate in the Settlement are permitted to do so
11 consistent with this Agreement; and (c) the Settlement Administrator has the most current and
12 accurate addresses for Class Members, including but not limited to performing an initial National
13 Change of Address database search on all Class Members who are former employees. In
14 addition, the Settlement Administrator shall perform a standard search, also known as “batch,”
15 “skip trace,” or “credit header” searches, on all addresses returned as undeliverable. The
16 Settlement Administrator shall immediately re-mail the Class Notice to all updated addresses
17 obtained through its efforts to locate the most current and accurate addresses for Class Members.
18 The Settlement Administrator shall also establish and maintain a dedicated case website, on
19 which it will post information of interest to the Class Members, and provide email and toll-free
20 telephone support to Class Members; maintain appropriate databases to fulfill its duties; receive,
21 control, and account for all returned Class Notices, disputes, requests for exclusion/opt-outs, and
22 objections; and prepare and deliver reports to Class Counsel and Defendant’s Counsel on a
23 weekly basis that communicate the status of the notice process, including the number of Class
24 Notices mailed, returned, searched, and re-mailed as well as disputes, requests for exclusion, and
25 objections. In addition to the duties identified above, the Settlement Administrator shall prepare
26 final declarations, reports, and invoices that accurately describe the notice process, the level of
27 participation, and actions taken to ensure the best possible notice of the Settlement was provided
28 to Class Members.

1 **4.2.3 Mailing of Class Notice to Class Members.** No later than ten (10)
2 business days following receipt of the information to be provided under Section 4.2.1, above, the
3 Settlement Administrator shall mail the Class Notice to all Class Members. The Settlement
4 Administrator shall send a copy of the Class Notice in the form approved by the Court in its
5 Preliminary Approval Order to Class Members, via first class United States mail, using the most
6 current mailing address. Any Class Notices returned to the Settlement Administrator with a
7 forwarding address shall be immediately re-mailed by the Settlement Administrator. The
8 Settlement Administrator shall conduct one address search for any Class Member's Class Notice
9 that is returned without a forwarding address and shall, upon obtaining a new or different address,
10 immediately re-mail the Class Member's Class Notice. Plaintiffs, Defendant, and their respective
11 counsel each agree that, other than as provided in this Agreement, they will not distribute or make
12 available any documents, notices, or information regarding this Action or the Settlement to any
13 Class Member, unless a specific request is first made by the Class Member.

14 **4.3 Requests for Exclusion/Opt Outs.** Class Members who wish to be excluded
15 from or opt out of the Settlement must submit a written, signed Request for Exclusion to the
16 Settlement Administrator, within the Request for Exclusion Deadline.

17 **4.3.1 Contents of Request.** The Request for Exclusion must contain (i) the full
18 name, address, and telephone number of the person requesting to be excluded; (ii) the words
19 "Request for Exclusion" at the top of the document; and (iii) the following statement:

20 "I wish to be excluded from the Class Settlement in this case,
21 *Gutierrez, et al. v. Environmental Systems Research Institute, Inc.*,
22 San Bernardino Superior Court Case No. CIVSB2300014."

23 **4.3.2 Personal Signatures.** The Request for Exclusion must be personally
24 signed by the Class Member who seeks to opt out. No Class Member may opt out by having a
25 request to opt out submitted by an actual or purported agent or attorney acting on behalf of the
26 Class Member. No opt out request may be made on behalf of a group of Class Members.

27 **4.3.3 Timeliness.** For purposes of determining timeliness, Requests for
28 Exclusion shall be deemed to have been submitted on the date postmarked by the U.S. Postal
Service or other delivery service. The Settlement Administrator shall stamp the date received on

1 the original of any Request for Exclusion it receives. Not later than fifteen (15) calendar days
2 after the Request for Exclusion Deadline set by the Court, the Settlement Administrator will
3 inform Class Counsel and Defendant's Counsel of the total number of Class Members who timely
4 submitted valid Requests for Exclusion. Not later than sixteen (16) court days before the date set
5 for the Fairness Hearing, the Settlement Administrator shall serve copies of all date-stamped
6 Requests for Exclusion on Class Counsel and Defendant's Counsel as well as a declaration
7 describing the Class Notice procedures. The Settlement Administrator shall retain the originals of
8 all Requests for Exclusion in its files. Counsel for the Parties shall not use or disclose the
9 information thus received for any purpose other than the effectuation of the Settlement.

10 **4.3.4 Effect of Exclusion/Opt-Out.** Class Members who are excluded from or
11 opt out of the Settlement cannot object to the Settlement. Only Settlement Class Members (i.e.,
12 those Class Members who have not excluded themselves from or opted out of the Settlement)
13 may object to the Settlement, in accordance with Section 4.4 of this Agreement.

14 **4.3.5 Non-Opt Outs Bound by Settlement.** Each Class Member who does not
15 submit a Request for Exclusion substantially in compliance with this Section 4.3 within the
16 deadline set by the Court shall be included in the Settlement as a Settlement Class Member and be
17 bound by the terms of this Agreement and any Court order approving the terms of the Settlement,
18 unless the Court deems such Class Member excluded at the time of the final Fairness Hearing.

19 **4.3.6 Resolution of Disputes.** In the event of any issue over the completeness,
20 accuracy, timeliness, or validity of a Request for Exclusion, the Parties shall meet and confer in
21 good faith for the purpose of resolving the issue and, if the issue cannot be resolved, shall submit
22 the dispute to the Settlement Administrator for a final and binding determination that shall not be
23 appealable.

24 **4.3.7 Defendant's Right to Rescind.** If more than five percent (5%) of the
25 Class Members opt out of the Settlement, then Defendant shall have the option, in its sole
26 discretion, to rescind this Agreement, in which case all of Defendant's obligations under this
27 Agreement shall cease to be of any force or effect, and this Agreement shall be null and void. If
28 Defendant exercises this option, it shall provide Plaintiffs with written notice of their election

1 within thirty (30) calendar days of the Request for Exclusion Deadline set by the Court, with a
2 copy to the Settlement Administrator, at which point the Parties shall return to their respective
3 positions that existed before the execution of this Agreement, and no term of this Agreement or
4 any draft thereof, or the negotiation, documentation, or other part or aspect of the Parties'
5 settlement discussions, shall have any effect or be admissible as evidence for any purpose in the
6 Action, or in any other proceeding. Notwithstanding the foregoing, the Parties agree that in the
7 event this Agreement is rescinded by Defendant pursuant to this Section 4.3.7, Plaintiffs' Second
8 Amended Complaint shall remain the operative complaint in the Action, with Defendant
9 reserving all rights, and Defendant shall pay the expenses incurred by the Settlement
10 Administrator through the date of Defendant's election to rescind, not to exceed the amount
11 approved by the Court in the Preliminary Approval Order.

12 **4.3.8 No Right to Exclusion by PAGA Group Members.** Because this
13 Settlement resolves claims brought pursuant to PAGA by Plaintiffs acting as proxies and as
14 Private Attorneys General of, and for, the State of California and the LWDA, the Parties agree
15 that no PAGA Group Member has the right to exclude himself or herself from the Settlement.
16 PAGA Group Members shall be bound by the terms of the Settlement, upon its approval by the
17 Court, regardless of whether he or she requested exclusion as a Class Member, and thus is not a
18 Settlement Class Member, and regardless of whether he or she cashes the PAGA Settlement
19 Award issued to him or her.

20 **4.4 Objections.** Only Settlement Class Members (i.e., those Class Members who
21 have not excluded themselves from the Settlement) may object to the Settlement.

22 **4.4.1 Manner of Objecting.** Settlement Class Members who wish to object to
23 the Settlement do not need to submit their objection in writing, but if they wish to do so, they may
24 submit to the Settlement Administrator a signed, written statement objecting to the Settlement.
25 Any such written statement and any supporting briefs or other materials should be submitted to
26 the Settlement Administrator no later than the Notice Response Deadline. Settlement Class
27 Members may but are not required to appear at the Fairness Hearing. Settlement Class Members
28

1 may appear at the Fairness Hearing to object to the Settlement without providing any prior notice
2 to the Parties, their counsel, the Settlement Administrator, or the Court.

3 **4.4.2 Response to Objections.** At the same time Plaintiffs move for Final
4 Approval pursuant to Section 4.7 of this Agreement, Plaintiffs shall also file a response to any
5 written objections submitted by Settlement Class Members. Class Counsel must draft the
6 response to the objections and give Defendant's Counsel a draft of the response to review at least
7 three (3) court days before it is filed or as soon as practical under the circumstances. Defendant
8 shall be permitted, but not required, to file their own response to any objections.

9 **4.4.3 No Right to Objections by PAGA Group Members.** Because this
10 Settlement resolves claims brought pursuant to PAGA by Plaintiffs acting as proxies and as
11 Private Attorney Generals of, and for, the State of California and the LWDA, the Parties agree
12 that no PAGA Group Member has the right to object to the Settlement, whether or not he or she
13 has objected thereto as a Settlement Class Member.

14 **4.5 Plan of Allocation: Calculation of All Settlement Awards.** The Settlement
15 Administrator shall be responsible for the Allocations of the Net Settlement Sum to Settlement
16 Class Members and of the PAGA Fund to PAGA Group Members and, thereby, for determining
17 the Class Settlement Awards and the PAGA Settlement Awards, all to be paid on a pro rata basis
18 as follows:

19 **4.5.1 Alleged Misclassification Class.** The Class Settlement Award for each
20 Settlement Class Member of the Alleged Misclassification Class shall be his or her pro-rata share
21 of 70% of the Net Settlement Sum (including and subject to Withholdings and Taxes) calculated
22 as follows: The Settlement Administrator shall first calculate the sum total number of Pay Periods
23 for all Settlement Class Members of the Alleged Misclassification Class. The Settlement
24 Administrator shall then divide 70% of the Net Settlement Sum by this sum total number of Pay
25 Periods, resulting in a per Pay Period value to be used in calculating Class Settlement Awards for
26 the Alleged Misclassification Class. The Settlement Administrator shall then take this per Pay
27 Period value and multiply it by the number of Pay Periods for each Settlement Class Member of
28

1 the Alleged Misclassification Class, resulting in the Class Settlement Award plus Withholdings
2 and Taxes for each Settlement Class Member of the Alleged Misclassification Class.

3 **4.5.2 Alleged Reimbursement Class.** The Class Settlement Award for each
4 Settlement Class Member of the Alleged Reimbursement Class shall be his or her pro-rata share
5 of 30% of the Net Settlement Sum (not including and not subject to Withholdings and Taxes),
6 calculated as follows: The Settlement Administrator shall first calculate the sum total number of
7 Pay Periods for all Settlement Class Members of the Alleged Reimbursement Class. The
8 Settlement Administrator shall then divide 30% of the Net Settlement Sum by this sum total
9 number of Pay Periods, resulting in a per Pay Period value to be used in calculating Class
10 Settlement Awards for the Alleged Reimbursement Class. The Settlement Administrator shall
11 then take this per Pay Period value and multiply it by the number of Pay Periods for each
12 Settlement Class Member of the Alleged Reimbursement Class, resulting in the Class Settlement
13 Award for each Settlement Class Member of the Alleged Reimbursement Class.

14 **4.5.3 Class Settlement Awards Payable Only to Settlement Class Members.**
15 The Settlement Administrator shall pay Class Settlement Awards from the Net Settlement Sum
16 and shall pay only those Class Settlement Awards payable to Settlement Class Members.

17 **4.5.4 Alleged Misclassification PAGA Group.** The PAGA Settlement Award
18 for each member of the Alleged Misclassification PAGA Group shall be the member's pro-rata
19 share of 70% of the PAGA Fund, calculated as follows: The Settlement Administrator shall first
20 calculate the sum total number of Pay Periods for all members of the Alleged Misclassification
21 PAGA Group. The Settlement Administrator shall then divide 70% of the PAGA Fund by the
22 sum total number of Pay Periods for all members of the Alleged Misclassification PAGA Group,
23 resulting in a per Pay Period value to be used in calculating PAGA Settlement Awards for these
24 members. The Settlement Administrator shall then take this per Pay Period value and multiply it
25 by the number of Pay Periods for each of these members, resulting in the PAGA Settlement
26 Award for each member of the Alleged Misclassification PAGA Group.

27 **4.5.5 Alleged Reimbursement PAGA Group.** The PAGA Settlement Award
28 for each member of the Alleged Reimbursement PAGA Group shall be the member's pro-rata

1 share of 30% of the PAGA Fund, calculated as follows: The Settlement Administrator shall first
2 calculate the sum total number of Pay Periods for all members of the Alleged Reimbursement
3 PAGA Group. The Settlement Administrator shall then divide 30% of the PAGA Fund by the
4 sum total number of Pay Periods for all members of the Alleged Reimbursement PAGA Group,
5 resulting in a per Pay Period value to be used in calculating PAGA Settlement Awards for these
6 members. The Settlement Administrator shall then take this per Pay Period value and multiply it
7 by the number of Pay Periods for each of these members, resulting in the PAGA Settlement
8 Award for each member of the Alleged Reimbursement PAGA Group.

9 **4.5.6 Payment of Settlement Awards.** At its discretion, the Settlement
10 Administrator may combine the Class Settlement Award and PAGA Settlement Award to be
11 issued to an individual who is both a Settlement Class Member (of the Alleged Misclassification
12 Class and/or Alleged Reimbursement Class) and a PAGA Group Member (of the Alleged
13 Misclassification PAGA Group and/or Alleged Reimbursement PAGA Group). The Parties
14 understand and acknowledge that a given person may be both a Settlement Class Member and a
15 PAGA Group Member or may be a PAGA Group Member but not a Settlement Class Member,
16 and vice versa. The Parties also understand and acknowledge that a given person may be a
17 Settlement Class Member of the Alleged Misclassification Class and the Alleged Reimbursement
18 Class or may be a Settlement Class Member of the Alleged Misclassification Class but not the
19 Alleged Reimbursement Class, and vice versa. The Parties further understand and acknowledge
20 that a given person may be a member of the Alleged Misclassification PAGA Group and the
21 Alleged Reimbursement PAGA Group or may be a member of the Alleged Reimbursement
22 Group but not the Alleged Misclassification PAGA Group.

23 **4.5.7 Using Class Information List to Determine Settlement Awards.** In
24 order to determine the individual Class Settlement Awards and PAGA Settlement Awards, the
25 Settlement Administrator shall use the information provided by Defendant pursuant to
26 Section 4.2.1, above. In the event that any dispute arises with respect to a Settlement Award
27 amount, the Settlement Administrator shall make the final determination after consultation with
28 Class Counsel and Defendant's Counsel.

1 4.6 **Taxes.**

2 4.6.1 **Withholdings and Taxes.** The Parties agree that, for purposes of this
3 Settlement, the portion of the Class Settlement Award allocated to Settlement Class Members of
4 the Alleged Misclassification Class shall be allocated 40% to wages subject to Withholdings and
5 Taxes and 60% to interest, penalties, and non-wage damages. The portion of the Class Settlement
6 Award allocated to Settlement Class Members of the Alleged Reimbursement shall be fully
7 allocated as non-wage damages. The entirety of each PAGA Settlement Award shall be allocated
8 as penalties.

9 4.6.2 **Tax Reporting.** When reporting Class Settlement Awards and PAGA
10 Settlement Awards for tax purposes, the amount of each Class Settlement Award allocated to
11 wages under Section 4.6.1 shall be reported by the Settlement Administrator on IRS Form W-2 as
12 wages, and the remainder of any Class Settlement Award, together with any PAGA Settlement
13 Award, shall be reported by the Settlement Administrator on IRS Form 1099-MISC as interest,
14 penalties, and non-wage damages.

15 4.6.3 **Settlement Class Member and PAGA Group Member Obligations.**
16 Each Settlement Class Member and/or PAGA Group Member receiving a Class Settlement
17 Award and/or PAGA Settlement Award shall be responsible for paying applicable federal, state,
18 and local income taxes, if any, on all amounts such person receives pursuant to this Agreement,
19 and Defendant shall have no liability therefor.

20 4.6.4 **Settlement Administrator Responsibilities Regarding Taxes.** It shall be
21 the responsibility of the Settlement Administrator or its designee to timely and properly withhold
22 all applicable Withholdings and Taxes from Class Settlement Awards and to prepare and deliver
23 the necessary tax documentation for signature by all necessary parties and, thereafter, to pay
24 Withholdings and Taxes to the appropriate authorities, and to file all necessary information and
25 other tax returns. Payments to Settlement Class Members, PAGA Group Members, Plaintiffs,
26 and Class Counsel pursuant to this Agreement shall be reported on IRS Forms W-2 and/or 1099-
27 MISC, as applicable, and shall be provided to the respective Settlement Class Members, PAGA
28 Group Members, Plaintiffs, Class Counsel, and all applicable governmental entities as required by

1 law. All Withholdings and Taxes deposited with the applicable government entities in
2 accordance with this Agreement shall be part of, and paid out of, the Class Settlement Award of
3 each Settlement Class Member of the Alleged Misclassification Class.

4 **4.6.5 Tax Expenses Resulting from Settlement Administration.** All
5 reasonable and direct expenses and costs incurred by or at the direction of the Settlement
6 Administrator in connection with the administration of the Settlement (including, without
7 limitation, expenses of tax attorneys and/or accountants incurred in providing advice to the
8 Settlement Administrator, and mailing and distribution costs and expenses relating to the filing, or
9 failure to file, the informational and other tax returns described above) shall be considered a cost
10 of administration of the Settlement and shall be part of the Settlement Administration Costs, to be
11 paid out of the Gross Settlement Amount.

12 **4.6.6 No Claims.** No person shall have any claim against Defendant, Counsel
13 for Defendant, Plaintiffs, the Class Members, Class Counsel, or the Settlement Administrator
14 based on mailings, distributions, and payments made in accordance with or pursuant to this
15 Agreement.

16 **4.7 Final Approval and Entry of Judgment in the Action.** Following the Request
17 for Exclusion Deadline and before the Fairness Hearing, on or before the date set by the Court,
18 Plaintiffs shall move for Final Approval of the Settlement in the Action. The Final Judgment and
19 Order Approving Settlement shall be substantially the same as the proposed order attached as
20 **Exhibit D.** Class Counsel shall draft the final approval papers and give Defendant's Counsel a
21 draft of the papers to review at least three (3) court days before they are filed.

22 **4.8 Distribution of Settlement Payments.** After the Effective Date, the Class
23 Settlement Awards and PAGA Settlement Awards shall be distributed to Settlement Class
24 Members and PAGA Group Members in accordance with the procedures set forth below:

25 **4.8.1 Remittance of Gross Settlement Amount.** Within ten (10) business days
26 from the Effective Date, Defendant will remit the Gross Settlement Amount to the Settlement
27 Administrator for the establishment of the Settlement Fund.
28

1 **4.8.2 Delivery of Payments.** Within ten (10) business days from Defendant's
2 remittance to the Settlement Administrator of the Gross Settlement Amount, the Settlement
3 Administrator shall establish the Settlement Fund and distribute (a) the Fee and Expense Award
4 to Class Counsel, (b) the Class Settlement Award and PAGA Settlement Award checks to
5 Settlement Class Members and PAGA Group Members, (c) the portion of the PAGA Settlement
6 Amount payable to the LWDA, (d) the General Release Payments to Plaintiffs, (e) the
7 Withholdings and Taxes arising from the Class Settlement Awards to the appropriate government
8 entities, and (f) the Settlement Administration Costs to itself. Also within ten (10) business days
9 from Defendant's remittance of the Gross Settlement Amount, the Settlement Administrator shall
10 provide Class Counsel and Defendant's Counsel an anonymized written report listing each
11 Settlement Class Member and PAGA Group Member and the amount of the Class Settlement
12 Award and PAGA Settlement Award to be paid to each such person. Class Counsel shall hold the
13 information contained in this report in strictest confidence and not use or disclose it for any
14 purpose, except on the written authorization of Defendant's or by order of the Court. No
15 payments shall be made or distributed unless and until the orders and Judgment described in this
16 Agreement are final (meaning that the right to appeal or otherwise seek review of such orders or
17 the Judgment has expired) and on the condition that no appeals from the orders and the Judgment
18 have been filed. Additionally, by no later than the date set by the Court in its Final Approval
19 order, the Settlement Administrator shall file a report with the Court setting forth (1) the total
20 amount of money paid to the Settlement Class Members as Class Settlement Awards, (2) the total
21 amount of money paid to PAGA Group Members as PAGA Settlement Awards, (3) the portion of
22 the PAGA Settlement Amount paid to the LWDA, (4) the Fee and Expense Award paid to Class
23 Counsel, and (5) the total amount of uncashed funds to be distributed to the *cypres* beneficiary
24 designated by the Parties in Section 4.8.3, below.

25 **4.8.3 Negotiation of Settlement Checks.** Any checks tendered to Settlement
26 Class Members and PAGA Group Members shall remain valid and negotiable for one hundred
27 and eighty (180) calendar days from the date of their issuance and shall thereafter be
28 automatically cancelled if not cashed by the Settlement Class Member or PAGA Group Member

1 within that time, after which the Settlement Class Member's and/or PAGA Group Member's right
2 to participate in the Settlement shall be extinguished, although the individual shall remain a
3 Settlement Class Member and/or PAGA Group Member bound by the Judgment entered in the
4 Action. After one hundred and eighty (180) calendar days, any amounts from uncashed checks
5 shall be transmitted to Child Advocates of San Bernardino County (C.A.S.A.), in accordance with
6 Code of Civil Procedure section 384(b). Administration of the Settlement shall be completed no
7 later than two hundred and seventy (270) calendar days from the Effective Date.

8 **4.8.4 Non-Reversionary Settlement.** No portion of the Gross Settlement
9 Amount will revert to Defendant.

10 **4.8.5 Discharge of Obligations.** Defendant shall fully discharge its obligations
11 to Plaintiffs, the Settlement Class Members, the PAGA Group Members, and the State of
12 California through the remittance of the Gross Settlement Amount to the Settlement
13 Administrator as set forth in Section 4.8.1, above, regardless of whether checks representing
14 individual Class Settlement Awards and/or PAGA Settlement Awards are actually received
15 and/or negotiated by the payee. Once Defendant has complied with its obligation set forth in
16 Section 4.8.1, above, it will be deemed to have satisfied all terms and conditions under this
17 Agreement, shall be entitled to all protections afforded to them under this Agreement, and shall
18 have no further obligations under the terms of the Agreement, regardless of what occurs with
19 respect to the further administration of the Settlement. Without prejudice to any other remedies,
20 the Settlement Administrator shall hold Defendant harmless from and against all liabilities,
21 claims, causes of action, costs, and expenses (including legal fees and expenses) arising out of
22 any failure to timely or properly compensate Class Members and PAGA Group Members as
23 provided for in this Agreement.

24 **4.9 Questions and Disputes.** In the event that questions or disputes arise regarding
25 the entitlement of any Class Member or PAGA Group Member under this Agreement, counsel for
26 each Party shall cooperate to provide to counsel for the other Party and the Settlement
27 Administrator all available information reasonably necessary to resolve them. Such information
28 shall be provided in either electronic form or hard copy, as the Settlement Administrator may

1 reasonably request. If the Parties cannot resolve any dispute concerning the entitlement of any
2 Class Member or PAGA Group Member under this Agreement, the dispute(s) shall be submitted
3 to the Settlement Administrator, who shall resolve the dispute(s) and whose decision shall be final
4 and binding. In such a dispute, the information provided by Defendant will be presumed
5 accurate.

6 **4.10 Notification and Certification by Settlement Administrator.** The Settlement
7 Administrator shall keep Class Counsel and Defendant's Counsel apprised of the status of the
8 claims administration process and its distribution of all sums pursuant to this Agreement. Upon
9 completion of administration of the Settlement, the Settlement Administrator shall provide a
10 detailed, written certification of such completion to the Court and counsel for the Parties.

11 **4.11 Nullification of Settlement Agreement if Settlement Not Approved.** In the
12 event (a) the Court does not preliminarily approve the Settlement as provided herein; (b) the
13 Court does not finally approve the Settlement as provided herein or in the event said approval is
14 reversed on appeal; (c) the Court does not enter the Judgment in the action as provided herein; or
15 (d) the Settlement does not become final for any other reason, including the exercise of
16 Defendant's right to rescind the Settlement under Section 4.3.7, above, this Agreement shall be
17 null and void *ab initio* (with the exception of this Section, Section 3.3, and Section 4.3.7) and any
18 order or Judgment entered by the Court in furtherance of this Settlement shall be treated as
19 withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to
20 their respective statuses as of October 1, 2024, except that the Second Amended Complaint shall
21 remain the operative complaint in the Action, with Defendant reserving all rights. In the event an
22 appeal is filed from the Judgment, or any other appellate review is sought before the Effective
23 Date, administration of the Settlement shall be stayed pending final resolution of the appeal or
24 other appellate review.

25 **4.12 Escalator Clause.** It is estimated in connection with the negotiation of this
26 Settlement that approximately 3,654 Alleged Misclassification Class Members and 4,179 Alleged
27 Reimbursement Class Members were employed during the relevant periods. The Parties agree
28 that if the actual number of members of the Alleged Misclassification Class exceed 3,654 by

1 more than 5% and/or if the actual number of members of the Alleged Reimbursement Class
 2 exceed 4,179 by more than 5%, the portion of the Gross Settlement Amount allocated in this
 3 Agreement to the claims of the Alleged Misclassification Class and/or the portion allocated to the
 4 claims of the Alleged Reimbursement Class, as applicable, shall increase by the same number of
 5 percentage points above 5% by which the number of members of the Settlement Class(es)
 6 exceeds 5%. Alternatively, at Defendant’s option and in lieu of increasing the Gross Settlement
 7 Amount, if the actual number of members of the Alleged Misclassification Class exceeds 3,654
 8 by more than 5%, the end date of the relevant period for the Alleged Misclassification Class shall
 9 be set as one day before the hiring date of the most recently hired exempt Esri employee in
 10 California subject to Esri’s Bank Time Policy and whose inclusion in the Alleged
 11 Misclassification Class would otherwise cause the number of Alleged Misclassification Class to
 12 exceed 3,836; if the actual number of members of the Alleged Reimbursement Class exceed
 13 4,179 by more than 5%, the end date of the relevant period for the Alleged Reimbursement Class
 14 shall be set as one day before the hiring date of the most recently hired Esri employee in
 15 California and whose inclusion in the Alleged Reimbursement Class would otherwise cause the
 16 number of Alleged Reimbursement Class to exceed 4,387.

17 **5. ENTRY OF JUDGMENT AND RELEASES**

18 5.1 **Obtaining Approval.** As soon as practicable after execution of this Agreement,
 19 Class Counsel shall, with the cooperation of Counsel for Defendant as reasonably requested by
 20 Class Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of the
 21 Agreement by the Court, including responding to any objectors, intervenors, or other persons or
 22 entities seeking to preclude approval of this Agreement.

23 5.2 **Entry of Judgment.** The Final Judgment and Order Approving Settlement in the
 24 Action shall include a provision for entry of judgment in accordance with this Agreement, with
 25 each Party to bear all of his, her, or its own costs and attorneys’ fees, except as expressly set forth
 26 herein.

1 5.3 **Notification to the LWDA.** Plaintiffs shall submit to the LWDA a copy of the
2 Judgment within ten (10) days after its entry, in accordance with Labor Code section 2699,
3 subdivision (J)(3).

4 5.4 **Settlement Class Release.** Upon the Effective Date, all Settlement Class
5 Members shall be deemed to have, and by operation of the Judgment shall have, expressly
6 released, waived, and relinquished the Released Claims. Settlement Class Members shall not sue
7 or otherwise make a claim against any of the Released Parties for any of the Released Claims and
8 shall be barred from filing any actions, claims, complaints, or proceedings regarding the Released
9 Claims with the California Division of Labor Standards Enforcement, or from initiating any other
10 proceedings against any of the Released Parties regarding any of the Released Claims. Settlement
11 Class Members' release, waiver, and relinquishment of the Released Claims shall preclude them
12 from participating in any judgment or settlement of claims that are the subject of the Released
13 Claims in any other class, collective, or representative action.

14 5.5 **PAGA Release.** Upon the Effective Date, the State of California, by and through
15 Chan as an agent and proxy of the State of California, shall be deemed to have, and by operation
16 of the Judgment shall have, expressly released, waived, and relinquished the Released PAGA
17 Claims. The LWDA and all PAGA Group Members shall be barred from pursuing recovery of
18 any civil penalties from any of the Released Parties for any of the Released PAGA Claims.

19 5.6 **Plaintiffs' General Release.** In addition to their release of the Released Parties
20 from the Released Claims and Released PAGA Claims as set forth in Sections 5.4 and 5.5, above,
21 effective upon the Effective Date, Gutierrez and Chan each hereby expressly release and waive
22 any and all claims, demands, rights, liabilities, and causes of action they have or have ever had
23 against any of the Released Parties, whether for economic damages, noneconomic damages,
24 exemplary damages, penalties, restitution, injunctive or declaratory relief, interest, attorneys'
25 fees, costs, or any other forms of monetary or non-monetary relief in any way arising out of or
26 relating to any facts, transactions, events, policies, occurrences, acts, disclosures, statements,
27 omissions, or failures to act from the beginning of time to the date they sign this Agreement,
28 including but not limited to any claims arising from or related to their employment with Esri or

1 the termination of that employment. This general release by Gutierrez and Chan shall become
2 effective upon the Effective Date and include all statutory claims, common law claims (including
3 but not limited to those sounding in contract, tort, and equity), and claims for compensation to the
4 fullest extent permitted by law. Gutierrez and Chan further agree not to sue or otherwise make a
5 claim against any of the Released Parties for any of the claims that are released pursuant to this
6 Section 5.6.

7 **5.7 Waiver of Civil Code Section 1542.** Gutierrez and Chan each acknowledge that
8 the general release herein includes potential claims and costs that may not be known or suspected
9 by them to exist, and they each hereby expressly and affirmatively waive and relinquish any and
10 all rights and benefits which may otherwise exist relating to the claims released in Section 5.6,
11 above, pursuant to Civil Code section 1542 and any similar law of any state or territory of the
12 United States. Civil Code section 1542 states as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
14 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
15 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
16 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
17 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
18 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
19 OR RELEASED PARTY.

17 **6. ADDITIONAL PROVISIONS**

18 **6.1 No Admission of Liability.** Esri contends that all of its employment practices
19 comply and have complied with all applicable laws and regulations; that all Class Members and
20 all PAGA Group Members were and are properly classified and reimbursed for all necessary
21 business expenses (when applicable); and that Esri has not engaged in any unlawful conduct,
22 whether willful or not, and whether knowing and intentional or not, with respect to anything
23 alleged in the Action. Defendant denies any wrongdoing or legal liability arising out of any of
24 the facts or conduct alleged in the Action and contends that all of Plaintiffs' claims lack merit and
25 Defendant has valid defenses to each of them. This Agreement reflects the compromise and
26 settlement of disputed claims between the Parties, and its provisions and any and all drafts,
27 communications, or discussions relating thereto do not constitute, are not intended to constitute,
28 and will not under any circumstances be deemed to constitute an admission by Defendant as to

1 the merits, validity, or accuracy of any of the allegations or claims in the Action, nor a waiver of
2 any defense.

3 **6.2 Parties Represented by Counsel.** The Parties hereby acknowledge that they have
4 been represented in negotiations for and in the preparation of this Agreement by independent
5 counsel of their own choosing, they have read this Agreement and have had it fully explained to
6 them by such counsel, and they are fully aware of the contents of this Agreement and of its legal
7 effect.

8 **6.3 Voluntary Agreement.** This Agreement is executed voluntarily and without
9 duress or undue influence on the part of or on behalf of any Party, or of any other person, firm, or
10 entity. Each Party has made such investigation of the facts pertaining to this Agreement and of
11 all other matters pertaining hereto as he, she, or it deems necessary.

12 **6.4 Notices.** The Parties, Class Counsel, and Defendant's acknowledge and agree that
13 for the purposes of any claims, actions, or proceedings arising out of this Agreement, notice
14 provided to Class Counsel shall be deemed notice to Plaintiffs and to Class Members. All
15 notices, requests, demands, and other communications required to be given to counsel for the
16 Parties under this Agreement shall be in writing and shall be delivered personally, faxed, emailed
17 or mailed, postage prepaid, by first class United States mail, addressed as follows:

18 To Class Members or to Plaintiffs:

19 Julian Hammond (jhammond@hammondlawpc.com)
20 Polina Brandler (pbrandler@hammondlawpc.com)
21 Ari Cherniak (acherniak@hammondlawpc.com)
22 HAMMONDLAW, P.C.
23 1201 Pacific Avenue, Suite 600
24 Tacoma, WA 98402
25 Telephone: (310) 601-6766
26 Facsimile: (310) 295-2385

27 To Defendant:

28 Byung-Kwan Park (BPark@mofocom)
29 William N. Lawther (WLawther@mofocom)
30 MORRISON & FOERSTER LLP
31 425 Market Street
32 San Francisco, California 94105-2482
33 Telephone: 415.268.7000

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Facsimile: 415.268.7522

6.5 **No Press Releases/Public Comment.** Absent Defendant’s express written consent, Plaintiffs and/or Class Counsel shall not (a) discuss, reveal, disclose, publicize, or promote the terms of this Settlement, or the negotiations leading to this Settlement, to any third party (including but not limited to the media, the legal community, or the public at large) and/or (b) issue any press releases and/or initiate any contact with the media regarding the Settlement, and/or otherwise advertise and/or publicize the Settlement. Nothing in this Agreement is intended to prevent Plaintiffs and/or Class Counsel from disclosing and/or discussing the terms of this Settlement (i) with the Court, (ii) with any Settlement Class Member, (iii) with the Settlement Administrator, (iv) with the LWDA, or (v) as otherwise required by law to fulfill Plaintiffs’ and/or Class Counsel’s obligations to effectuate the Settlement, and/or in court filings in other cases by Class Counsel in connection with a class action approval process, class certification, and/or class-wide settlement approval.

6.6 **Employment Verification.** Defendant agrees that Plaintiffs may direct prospective employers or other individuals or entities to Esri’s HR Department, who can be contacted at voe@esri.com, for employment verification purposes. The response to such a request will consist of dates of employment, position held, and nothing else.

6.7 **Authorization.** The Parties hereto represent and warrant that each signatory hereto has the full right and authority to enter into this Agreement and bind the Party on whose behalf he, she, or it has executed this Agreement.

6.8 **Agreement Binding on Successors in Interest.** This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the Parties.

6.9 **Time Periods.** The time periods and dates set forth in this Agreement with respect to the giving of notices and hearings are subject to approval and modification by the Court or the written stipulation of counsel for the Parties.

1 6.10 **Mutual Full Cooperation.** The Parties agree to cooperate fully with each other to
2 accomplish the terms of this Agreement, including but not limited to execution and delivery of
3 any and all additional papers, documents, and other assurances and taking such other action that
4 may be reasonably necessary to implement the terms of this Agreement. The Parties and their
5 counsel shall use their best efforts, including all efforts contemplated by this Agreement and any
6 other efforts that may become necessary by order of the Court, to effectuate this Agreement and
7 the terms set forth herein.

8 6.11 **Entire Agreement.** The Exhibits to this Agreement are integral parts of this
9 Agreement and are hereby incorporated and made a part of the Agreement. This Agreement
10 contains the entire agreement between the Parties and constitutes the complete, final, and
11 exclusive embodiment of their agreement with respect to the subject matter hereof. This
12 Agreement is executed without reliance upon any promise, representation, or warranty by any
13 Party or representative of any Party, other than those expressly set forth herein. Any
14 inconsistency between this Agreement and the attached Exhibits will be resolved in favor of this
15 Agreement.

16 6.12 **Headings.** The various headings used in this Agreement are solely for the
17 convenience of the Parties and shall not be used to interpret this Agreement.

18 6.13 **No Construction Against Drafter.** This Agreement shall be deemed to have been
19 drafted jointly by the Parties, and any rule that a document shall be interpreted against the drafter
20 shall not apply to this Agreement.

21 6.14 **Amendment and Modification.** Except as expressly provided in Section 6.9,
22 above, with respect to time periods and dates set forth herein, this Agreement may not be
23 amended, altered, or modified except in writing and signed by the Parties hereto, their successors
24 in interest, or their duly authorized representatives, and approved by the Court.

25 6.15 **Governing Law.** This Agreement is entered into in accordance with the laws of
26 the State of California and shall be governed by and interpreted in accordance with those laws.

27 6.16 **Jurisdiction of the Court.** Any dispute regarding the interpretation or validity or
28 otherwise arising out of this Agreement, or relating to the Action, the Released Claims, or the

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Dated: 2/7/2025

YESENIA GUTIERREZ

Yesenia Gutierrez

On behalf of herself and the Settlement Class

Dated: 2/7/2025

KATHY CHAN

KChan

On behalf of herself, the Settlement Class, the State of California, and all PAGA Group Members

Dated: 2/12/2025

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

Signed by:
Chris Nowlin
By: 28205C344C534D3...

APPROVED AS TO FORM:

Dated: February 7, 2025

HAMMONDLAW, P.C.

By: *Julian Hammond*
Julian Hammond

Attorneys for Plaintiffs
YESENIA GUTIERREZ and KATHY CHAN

Dated: February 10, 2025

MORRISON & FOERSTER LLP

By: *Byung-Kwan Park*
Byung-Kwan Park

Attorneys for Defendant
ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC.

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

YESENIA GUTIERREZ and KATHY
CHAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC., a
California Corporation,

Defendant.

Case No. CIVSB2300014

**NOTICE OF SETTLEMENT OF
CLASS ACTION**

ATTENTION: If you were employed by Environmental Systems Research Institute, Inc. in California at any time during the period from November 15, 2018 to [the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court] (the “Settlement Period”), you may be a Class Member eligible to receive money from a proposed Settlement in the above-captioned class action lawsuit.

PLEASE READ THIS NOTICE CAREFULLY. This Notice relates to the proposed Settlement. If you are a Class Member, it contains important information affecting your rights to participate in the Settlement as further described below. This Notice advises you of the terms of the Settlement and your rights and options under it.

To be eligible for your share of the Settlement, you are not required to make a claim. However, to ensure receipt of your share, you must update the Settlement Administrator, Settlement Services, Inc., with any change of address.

What is this proposed Settlement about?

This action was originally filed against defendant Environmental Systems Research Institute, Inc. (“Defendant” or “Esri”) on November 15, 2022 and refiled on January 4, 2023 (the “Action”). The operative second amended complaint (the “Complaint”), filed on [DATE], names plaintiffs Yesenia Gutierrez and Kathy Chan (collectively, “Plaintiffs”) and asserts claims against Defendant for alleged (1) failure to pay overtime wages, (2) failure to provide meal breaks, (3) failure to permit and authorize rest breaks, (4) failure to pay all wages due upon termination, (5) failure to issue accurate itemized wage statements, (6) failure to reimburse business expenses, (7) unfair, unlawful, or fraudulent business practices, and (8) civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The first five claims are based on Plaintiffs’ allegation that Defendant misclassified its employees in California

If you have questions, contact the Settlement Administrator at [redacted] or [Insert Email]**EXHIBIT A**

subject to Defendant's Bank Time Policy as exempt. Claim (6) (failure to reimburse business expenses) is based on Plaintiffs' allegation that employees (whether exempt or non-exempt) were not reimbursed for all business expenses they were purportedly required or expected to incur in connection with working remotely during the COVID-19 pandemic and thereafter. Claim (7) (for unfair, unlawful, or fraudulent business practices) and claim (8) (civil penalties sought under PAGA) are based on these same theories of liability. The Complaint and all the other complaints in the Action are referred to collectively as the "Complaints," and all of the PAGA notices filed by plaintiff Kathy Chan with the California Labor and Workforce Development Agency ("LWDA") are referred to collectively as the "PAGA Notices."

Under the proposed Class Settlement, Defendant agrees to make payments ("Class Settlement Awards") to Class Members who do not opt out of the Settlement ("Settlement Class Members"). These Class Settlement Awards will be based on the number of pay periods during the Settlement Period that each Settlement Class Member was employed by Defendant in California for at least one day ("Pay Periods") compared to the total number of Pay Periods for all Settlement Class Members, as more fully described below.

Defendant also agrees to pay the Settlement Administration Costs, General Release Payments to both of the Plaintiffs, a PAGA Settlement Amount to be paid to the LWDA and PAGA Group Members in settlement of the PAGA claims, and a Fee and Expense Award to Plaintiffs' counsel ("Class Counsel"), all subject to the Court's approval. Defendant's maximum total obligation under the proposed Settlement is \$4,910,000, subject to escalation only to the extent described below.

The proposed Settlement is not an admission of liability by Defendant. Throughout the course of litigation in the Action, Defendant has denied any liability or wrongdoing, or that any compensable injury arose out of any of the matters alleged in the Action. Defendant contends that it has complied with all applicable laws and regulations regarding all of those matters.

Class Counsel believes that the proposed Settlement is in the best interests of the Class Members. Further proceedings would be very expensive and take a long time. Moreover, no one can predict the precise outcome of the disputed issues in this case. Therefore, Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate for the Class Members.

The Court has preliminarily approved the proposed Settlement as fair, reasonable, and adequate. The final determination of those issues will be made at the Final Approval Hearing to be held on [Final Approval Hearing Date] at [Final Approval Hearing Time] ("Final Approval Hearing").

Summary of the proposed Settlement

Defendant has agreed to pay \$4,910,000 ("Gross Settlement Amount") to resolve all claims that were alleged in any of the Complaints or any of the PAGA Notices or that could have been alleged based on the facts alleged in any of the Complaints or any of the PAGA Notices, for Settlement Class Members' release of claims described below, and for the release of PAGA

claims by the State of California and PAGA Group Members. This amount is subject to escalation if the number of members of the Alleged Misclassification Class exceed 3,654 by more than 5% and/or if the number of members of the Alleged Reimbursement Class exceed 4,179 by more than 5%. If finally approved by the Court, the proposed Settlement will distribute money as follows:

Class Settlement Awards to Settlement Class Members: Settlement Class Members (Class Members who do not exclude themselves from the Settlement) will each be paid a Class Settlement Award, which is their pro-rata share of the Net Settlement Sum, calculated as follows:

The Class Settlement Award for each Settlement Class Member of the Alleged Misclassification Class shall be his or her pro-rata share of 70% of the Net Settlement Sum (including and subject to Withholdings and Taxes) calculated as follows: The Settlement Administrator shall first calculate the sum total number of Pay Periods for all Settlement Class Members of the Alleged Misclassification Class. The Settlement Administrator shall then divide 70% of the Net Settlement Sum by this sum total number of Pay Periods, resulting in a per Pay Period value to be used in calculating Class Settlement Awards for the Alleged Misclassification Class. The Settlement Administrator shall then take this per Pay Period value and multiply it by the number of Pay Periods for each Settlement Class Member of the Alleged Misclassification Class, resulting in the Class Settlement Award plus Withholdings and Taxes for each Settlement Class Member of the Alleged Misclassification Class.

The Class Settlement Award for each Settlement Class Member of the Alleged Reimbursement Class shall be his or her pro-rata share of 30% of the Net Settlement Sum (not including and not subject to Withholdings and Taxes), calculated as follows: The Settlement Administrator shall first calculate the sum total number of Pay Periods for all Settlement Class Members of the Alleged Reimbursement Class. The Settlement Administrator shall then divide 30% of the Net Settlement Sum by this sum total number of Pay Periods, resulting in a per Pay Period value to be used in calculating Class Settlement Awards for the Alleged Reimbursement Class. The Settlement Administrator shall then take this per Pay Period value and multiply it by the number of Pay Periods for each Settlement Class Member of the Alleged Reimbursement Class, resulting in the Class Settlement Award for each Settlement Class Member of the Alleged Reimbursement Class.

“Alleged Misclassification Class” means all current and former employees of Defendant in the State of California subject to Defendant’s Bank Time Policy and whom Defendant classified as exempt at any time from November 15, 2018 to [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court].

“Alleged Reimbursement Class” means all current and former employees (whether exempt or non-exempt) of Defendant in the State of California from March 16, 2020 to [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court].

“Pay Periods” means the number of pay periods during which a Class Member and/or PAGA Group Member was employed by Esri in California for at least one day during the applicable periods for each Class Member and/or PAGA Group Member. Pay Periods shall be calculated according to Defendant’s records.

“Net Settlement Sum” means the Gross Settlement Amount less the following: (a) the PAGA Settlement Amount, (b) the Fee and Expense Award, (c) the General Release Payments, (d) the Settlement Administration Costs, and (e) Withholdings and Taxes, all of which are described below. 70% of the Net Settlement Sum (including and subject to Withholdings and Taxes) shall be allocated to Settlement Class Members of the Alleged Misclassification Class, and the remaining 30% (not including and not subject to Withholdings and Taxes) shall be allocated to Settlement Class Members of the Alleged Reimbursement Class.

Each Settlement Class Member and/or PAGA Group Member receiving a Class Settlement Award and/or PAGA Settlement Award shall be responsible for paying applicable federal, state, and local income taxes, if any, on all amounts such person receives pursuant to the Agreement, and Defendant shall have no liability therefor.

Fee and Expense Award to Class Counsel: Upon approval by the Court, Defendant will pay attorneys’ fees and reimburse litigation costs and expenses to Class Counsel (HammondLaw, P.C.). The proposed Settlement permits Class Counsel to request up to 33.33% of the Gross Settlement Amount (\$1,636,666.67) as their fees for prosecuting this case and up to \$50,000 for reimbursement of their costs and expenses incurred in the Action. You are not personally responsible for any of Class Counsel’s attorneys’ fees, costs, or expenses.

PAGA Settlement Amount: The proposed Settlement provides for a payment of \$100,000 for resolution of the PAGA claims alleged in the Complaints, the PAGA Notices, or any of them. Of that amount, 75% (or \$75,000) of the PAGA Settlement Amount shall be paid to the LWDA and 25% (or \$25,000) of the PAGA Settlement Amount shall form the PAGA Fund to be paid to PAGA Group Members pro rata, based on the number of Pay Periods worked. PAGA Group Members include members of the Alleged Misclassification PAGA Group and Alleged Reimbursement PAGA Group.

Other Payments: The proposed Settlement provides for a General Release Payment of \$7,500 to Plaintiff Gutierrez and a General Release Payment of \$7,500 to Plaintiff Chan. The proposed Settlement further provides for payment estimated not to exceed \$57,250 to the Settlement Administrator, Settlement Services, Inc., for its services in mailing the Class Notice and administering the Settlement.

What are my rights and options?

You can exclude yourself from the Class Settlement: If you do not want a Class Settlement Award and do not want to be bound by any of the proposed Class Settlement’s terms, including the release of the Released Claims discussed below, you must make a timely written Request for Exclusion. Your Request for Exclusion must contain (i) your full name, address, and telephone

number; (ii) the words “Request for Exclusion” at the top of the document; and (iii) the following statement:

“I wish to be excluded from the Class Settlement in this case, *Yesenia Gutierrez, et al. v. Environmental Systems Research Institute, Inc.*, San Bernardino Superior Court Case No. CIVSB2300014.”

Your Request for Exclusion must be personally signed by you. Any Request for Exclusion submitted by someone else on your behalf will not be valid. Your Request for Exclusion must be mailed to the Settlement Administrator at the below address and must be postmarked by **[DATE – 45 calendar days from the date of initial mailing of the Class Notice, or such other date set by the Court in the Preliminary Approval Order for submitting a Request for Exclusion to the Settlement Administrator]**.

Yesenia Gutierrez, et al. v. Environmental Systems Research Institute, Inc.
[Settlement Services, Inc.’s Mailing Address]

You should not request exclusion if you wish to receive money from the Class Settlement.

You do not have the right to be excluded from the PAGA Settlement, whether or not you exclude yourself from the Class Settlement.

1. **You can object to the Class Settlement:** You can object to the Settlement before the Court’s final approval of the Settlement. To object, you should submit a signed, written objection to the Settlement Administrator by **[DATE – 45 calendar days from the date of initial mailing of the Class Notice, or such other date set by the Court in the Preliminary Approval Order]**. You may submit a supporting brief or other materials to the Settlement Administrator with your signed, written objection, no later than **[DATE – 45 calendar days from the date of initial mailing of the Class Notice, or such other date set by the Court in the Preliminary Approval Order]**. You may also appear, even if you do not submit a written objection, and object to the Settlement at the Final Approval Hearing currently set for **[Final Approval Hearing Time]** on **[Final Approval Hearing Date]**, in Department S26 - SBJC of the Superior Court of California, County of San Bernardino, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415-0210. If you submit a written objection, you are not required to appear, either personally or through counsel, at the Final Approval Hearing in order for your written objection to be considered. You may object to the Settlement only if you do NOT submit a Request for Exclusion.

You do not have the right to object to the PAGA Settlement, whether or not you object to the Class Settlement.

2. **You can dispute the number of your Pay Periods:** A Notice of Pay Periods form is attached as Form A to this Notice. It provides your number of Pay Periods during the Settlement Period according to Defendant’s records. If you do not agree with the number of

your Pay Periods shown on the form, you may dispute the number by completing the Notice of Pay Periods form and mailing it to the Settlement Administrator by [DATE – 45 calendar days from mailing Class Notice / Notice Response Deadline].

3. **You can do nothing:** You can do nothing. If you do nothing, you will be bound by the proposed Settlement terms and you will be entitled to receive a Class Settlement Award as described above.

To the extent you are a PAGA Group Member, you will receive a PAGA Settlement Award, regardless of whether you exclude yourself from the Class Settlement, object to the Class Settlement, dispute the number of your Pay Periods, or do nothing.

What claims am I releasing by participating in the Class Settlement?

In exchange for the consideration given by Defendant in the proposed Settlement, all Class Members who do not opt out of the Class Settlement (the Settlement Class Members) will expressly release, waive and relinquish, and will be deemed to have released, waived and relinquished, all Released Claims against all Released Parties. The State of California, by and through Plaintiff Chan as its agent and proxy, will expressly release, waive and relinquish, and will be deemed to have released, waived and relinquished, all Released PAGA Claims against all Released Parties. All PAGA Group Members (whether they are a Settlement Class Member or not) will be barred from pursuing recover of any civil penalties, as agents or proxies of the State of California, for any of the Released PAGA Claims.

“Released Claims” means all claims, debts, liabilities, demands, obligations, damages, and actions or causes of action of any kind, including wage and hour claims related to allegations of employee misclassification and failure to reimburse business expenses, arising before or on the end date of the Settlement Period and that were alleged in the Original Complaint, the Complaint, the First Amended Complaint, and the Second Amended Complaint or any of the PAGA Notices or could have reasonably been alleged against any of the Released Parties based on the facts alleged in any of the Complaints or any of the PAGA Notices. Specifically, for the Settlement Class Members of the Alleged Misclassification Class, released claims include, without limitation, claims under Labor Code sections 201-203, 204, 226, 226(a), 226(e), 226.7, 510, 512, 1194, and 2698 et seq.; Business and Professions Code section 17200 et seq.; and Code of Civil Procedure section 1021.5. For the Settlement Class Members of the Alleged Reimbursement Class, released claims include, without limitation, claims under Labor Code sections 2802 and any derivative claims; Business and Professions Code section 17200 et seq.; and Code of Civil Procedure section 1021.5.

“Released PAGA Claims” means all claims that were or could have been asserted pursuant to PAGA arising out of or related to the Released Claims arising before or on the end date of the PAGA Period. Specifically, for the Alleged Misclassification PAGA Group, released PAGA claims include those based on, without limitation, alleged violations of Labor Code sections 201-203, 204, 226, 226(a), 226(e), 226.7, 510, 512, 1194, and 2698 et seq. For the Alleged Reimbursement PAGA Group, released PAGA claims include those based on, without limitation,

alleged violations of Labor Code section 2802 and any derivative Labor Code claims. The Released PAGA Claims are released by both the State of California and the PAGA Group Members as part of this Settlement.

“Released Parties” means Defendant; each of its respective present, former, or future parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors, successors, and assigns; each of its respective present, past, or future officers, directors, employees, partners (both general and limited), shareholders, agents, attorneys, insurers, and any other successors, assigns, or legal representatives; and any other individual or entity which could be liable for any of the Released Claims or Released PAGA Claims.

All Settlement Class Members intend and are deemed to intend that this Settlement shall be effective as a bar to any and all Released Claims against any and all Released Parties.

The Settlement Class Members further agree not to sue or otherwise make a claim against any of the Released Parties arising out of or related to any of the Released Claims. The Settlement Class Members further agree that their release, waiver, and relinquishment of the Released Claims shall preclude them from participating in any judgment or settlement of claims that are the subject of any of the Released Claims in any other class, collective, or representative action.

All PAGA Group Members (whether a Settlement Class Member or not) shall be barred from bringing, joining, or otherwise participating in a PAGA representative action or otherwise making, joining, or otherwise participating in a claim against any of the Released Parties for any of the Released PAGA Claims. The State of California shall be barred from pursuing recovery of any civil penalties from any of the Released Parties for any of the Released PAGA Claims.

When is the next Court hearing?

A Final Approval Hearing will be held before the Honorable Christian Towns in Department S26 - SBJC of the Superior Court of California, County of San Bernardino, located at the San Bernardino Justice Center, 247 West Third Street, San Bernardino, California 92415-0210, on [Final Approval Hearing Date] at [Final Approval Hearing Time] to determine whether the Settlement is fair, reasonable, and adequate. Judge Towns will be asked to approve the plan for distributing the Class Settlement Awards, the Fee and Expense Award to Class Counsel, the General Release Payments to the Plaintiffs, the PAGA Settlement Amount, and payment to the Settlement Administrator for its services. A motion for final approval of these items should be on file with the Court no later than [REDACTED], 2025 and will be available for review after that date. This hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing.

What if I need more information?

Capitalized terms in this Notice have the same meaning they are given in the Class and PAGA Settlement Agreement and Release (“Agreement”), filed with the Court on [DATE] as an attachment to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. For the

precise terms and conditions of the Settlement, you should consult the detailed Agreement and the Preliminary Approval Order, which is also on file with the Court. You may access key documents filed in this case by visiting the case website maintained by the Settlement Administrator at [www.\[INSERT\].com](http://www.[INSERT].com). You may also access documents filed in this case by visiting <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>. To navigate to the filed documents, you will need to click on “Accept” at the bottom of the page, which will redirect you to the Court Access Portal page. From the Court Access Portal page, you will need to click on “Search” and then click on “CASE INFORMATION” from the drop-down menu. You may then search for filings by entering the case number located at the top of this Notice into the “CASE NUMBER SEARCH” query. If you have any questions, you can contact the Settlement Administrator at [REDACTED].

You can also contact Class Counsel at:

HammondLaw, P.C.
Julian Hammond (SBN 268489)
jhammond@hammondlawpc.com
(310) 601-6766
Polina Brandler (SBN 269086)
(310) 810-3246

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION
ABOUT THIS SETTLEMENT**

Exhibit B

NOTICE OF PAY PERIODS

Yesenia Gutierrez, et al. v. Environmental Systems Research Institute, Inc.
San Bernardino Superior Court, Case No. CIVSB2300014

To: [Class Member Name]

Your potential individual Class Settlement Award in the Settlement of the class action lawsuit listed above is based on the number of pay periods during which you were employed by Environmental Systems Research Institute, Inc. (“Defendant” or “Esri”) in California for at least one day from either November 15, 2018 or March 16, 2020—depending on whether you are a member of the Alleged Misclassification Class, the Alleged Reimbursement Class, or both—to and including [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court] (“Pay Periods”). According to Defendant’s records, you had a total of:

Pay Periods from November 15, 2018 to [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court]; and

Pay Periods from March 16, 2020 to [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court].

If you wish to participate in the Class Settlement and you agree with the number of your Pay Periods shown above, then you do not need to take any further action. You will receive your Class Settlement Award once the Settlement becomes final.

If you **do not agree** with the number of your Pay Periods shown above, please insert in the space below the number of pay periods during which you believe you were employed by Esri in California for at least one day from either November 15, 2018 or March 16, 2020—depending on whether you are a member of the Alleged Misclassification Class, the Alleged Reimbursement Class, or both—to and including [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court].

The number of Pay Periods you believe is correct for you:

Pay Periods from November 15, 2018 to [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court]; and

Pay Periods from March 16, 2020 to [DATE – the date on which Plaintiffs’ motion for Preliminary Approval of this Settlement is first scheduled to be heard by the Court].

EXHIBIT B

- I am enclosing documentation to support the number of my Pay Periods being different from the number of Pay Periods shown for me by Defendant's records, as shown above.
- I am *not* enclosing documentation to support the number of my Pay Periods being different from the number of Pay Periods shown for me by Defendant's records, as shown above.

Dated: _____ (signature)

If you wish to dispute the number of your Pay Periods shown above, you must complete, sign, and date this Notice of Pay Periods form and mail it with any supporting documentation to the Settlement Administrator, Settlement Services, Inc., at [ADDRESS], postmarked no later than _____, 2025 [DATE – 45 calendar days after mailing of Class Notice / Notice Response Deadline].

If you dispute the number of your Pay Periods, the Settlement Administrator will resolve the dispute, and its decision will be final and binding. In resolving the dispute, the information provided by Defendant will be presumed accurate.

Form A

Exhibit C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

YESENIA GUTIERREZ and KATHY CHAN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC., a California Corporation,

Defendant.

Case No. CIVSB2300014

(Assigned for All Purposes to the Honorable
Christian Towns, Dept. S26 - SBJC)

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND PAGA SETTLEMENT**

Date Action Filed: January 4, 2023
Trial Date: Not Yet Set

1 This matter has come before the Honorable Christian Towns in Department S26 - SBJC of
2 the Superior Court of the State of California, for the County of San Bernardino, on an unopposed
3 Motion for Preliminary Approval of Class Action Settlement of the above-captioned Action
4 (“Motion”). The Court, having duly considered the Motion, good cause appearing, hereby orders
5 as follows:

6 1. Capitalized terms in this Order shall have the same meaning they are given in the
7 Class and PAGA Settlement Agreement and Release (“Agreement”) filed with the motion.

8 2. The Court preliminarily approves the Settlement based on the terms set forth in the
9 Agreement. The Settlement appears to be fair, adequate, and reasonable, in the best interests of the
10 absent Class Members, and presumptively valid, subject only to any objections that may be raised
11 at or before the Final Approval Hearing.

12 3. A Final Approval Hearing on the question of whether the proposed Settlement, Fee
13 and Expense Award, General Release Payments, PAGA Settlement Amount, Settlement
14 Administration Costs, and Class Settlement Awards to the Settlement Class Members should
15 finally be approved as fair, reasonable, and adequate as to the Settlement Class Members is
16 scheduled for _____, 2025, at __:__.m. in Department S26 - SBJC of this Court.

17 4. The Court approves as to form and content the Class Notice attached hereto as
18 Exhibit 1 and incorporated by reference. The Court approves the procedure for Class Members to
19 request exclusion from or to object to the Settlement as set forth in the Class Notice. The Court
20 approves as to form and content the Notice of Pay Periods attached to the Class Notice, which shall
21 be mailed to Class Members with the Class Notice.

22 5. The Court directs the mailing of the Class Notice in accordance with the
23 Implementation Schedule set forth below. The Court finds that the manner and mode of giving
24 notice to Class Members meet the requirements of due process and provide the best notice
25 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
26 entitled thereto.

27 6. In the event that the Settlement is not finally approved or is not effectuated for
28 whatever reason, the Parties will be returned to their status quo ante positions, except that the

1 Second Amended Complaint shall remain the operative complaint in the Action, with Defendant
 2 reserving all rights.

3 7. The Classes are preliminarily certified for settlement purposes only.

4 8. The Court preliminarily approves HammondLaw, P.C. as Class Counsel.

5 9. The Court provisionally appoints Settlement Services, Inc. as the Settlement
 6 Administrator.

7 10. The Court orders the following Implementation Schedule for further proceedings:
 8

9 Deadline for Defendant to submit Class Member information to Settlement Administrator.	_____, 2025 (15 business days from entry of this Order.)
11 Settlement Administrator mails Class Notice to Class Members.	_____, 2025 (10 business days from receipt of Class Member information from Defendant.)
14 Notice Response Deadline for Class Members to mail Requests for Exclusion.	_____, 2025 (45 calendar days from initial mailing of Class Notice.)
16 Notice Response Deadline for submitting to the Settlement Administrator any objections to Settlement.	_____, 2025 (45 calendar days from initial mailing of Class Notice.)
19 Deadline for Class Counsel to file Motion for Final Approval of Settlement and Fee and Expense Award.	_____, 2025
21 Fairness Hearing and Final Approval. <i>[at least ninety (90) calendar days after the Preliminary Approval Date, or as soon thereafter as the Court is available]</i>	_____, 2025 at __:__.m.

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IT IS SO ORDERED.

Dated: _____

By: _____
The Honorable Christian Towns
Judge of the Superior Court

Exhibit D

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

YESENIA GUTIERREZ and KATHY CHAN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ENVIRONMENTAL SYSTEMS RESEARCH
INSTITUTE, INC., a California Corporation,

Defendant.

Case No. CIVSB2300014

(Assigned for All Purposes to the Honorable
Christian Towns, Dept. S26 - SBJC)

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Date Action Filed: January 4, 2023
Trial Date: Not Yet Set

1 This matter has come before the Court on an unopposed Motion for Final Approval of
2 Class Action Settlement (“Motion”). A Fairness Hearing was held on [Fairness Hearing Date],
3 following the Court’s order preliminarily approving the Settlement and notice of the Settlement
4 to the Class with an opportunity for Class Members to request exclusion or object to the
5 Settlement. The Court, having duly considered the Motion, good cause appearing, hereby orders,
6 adjudges, and decrees as follows:

7 1. Capitalized terms in this Order and Judgment have the same meaning they are
8 given in the Class and PAGA Settlement Agreement and Release (“Agreement”) attached as
9 Exhibit [X] to the Declaration of [NAME] in support of the Motion for Preliminary Approval of
10 Class Action Settlement, filed [FILING DATE].

11 2. This Court has jurisdiction over the subject matter of this Action, all claims
12 alleged herein, and all Parties hereto, including plaintiffs Yesenia Gutierrez and Kathy Chan
13 (“Plaintiffs”), all Class Members, and defendant Environmental Systems Research Institute, Inc.
14 (“Defendant”).

15 3. The Court finds that the Class Members have been provided proper and adequate
16 notice, meeting the requirements of due process. The Court finds, based on the evidence
17 submitted, that the Class Notice and related documents, as well as the methodology used to
18 implement the Settlement, including providing notice to Class Members, (a) complied with this
19 Court’s Preliminary Approval Order, (b) constituted the best practicable notice under the
20 circumstances, (c) constituted notice that was reasonably calculated, under the circumstances, to
21 apprise Class Members of the pendency of the Action and the proposed Settlement and of their
22 right to participate in the Settlement, to opt out of the Settlement, to object to the Settlement, and
23 to appear at the Fairness Hearing, and (d) met all applicable requirements of due process, the
24 Code of Civil Procedure and other applicable authorities.

25 4. The Court finds that adequate time has been provided for Class Members to
26 respond to the Class Notice, including by opting out of the Settlement or objecting to the
27 Settlement or to Plaintiff’s Motion for Approval of Fee and Expense Award.
28

1 5. The Court finds that the Settlement, the terms of which are set forth in the
 2 Agreement, is fair, adequate, and reasonable as to the settling Parties, including the Settlement
 3 Class Members, and is in the best interests of all those affected by the Settlement. The Court
 4 finds that the Settlement was the result of vigorously contested litigation and good-faith arm's-
 5 length negotiations, and is reasonable based on the risks, expense, and complexity of the Action
 6 and the likelihood of success in it. The Court hereby grants final approval of the Parties'
 7 Settlement, as set forth in the Agreement, and enters Judgment accordingly. The Parties are
 8 directed to perform the terms of the Agreement and to report to the Court when that performance
 9 has been completed.

10 6. The Court has already determined solely for purposes of this Settlement, by way
 11 of its Preliminary Approval Order, that the Settlement Classes satisfy the applicable standards for
 12 certification under the Code of Civil Procedure. The Settlement Classes, which will be bound by
 13 this Final Approval Order and Judgment, include all Class Members who did not submit a timely
 14 and valid Request for Exclusion. The Class Members who have opted out of the Settlement by
 15 submitting a timely and valid Request for Exclusion are listed on Exhibit 1 hereto. For purposes
 16 of the Settlement and this Final Approval Order and Judgment, the Settlement Classes shall be
 17 represented by Plaintiffs and shall include Plaintiffs and all members of the Alleged
 18 Misclassification Class and the Alleged Reimbursement Class—i.e., all current and former
 19 employees of Defendant in the State of California subject to Defendant's Bank Time Policy and
 20 whom Defendant classified as exempt at any time from November 15, 2018 to [DATE – the date
 21 on which Plaintiffs' motion for Preliminary Approval of this Settlement is first scheduled to be
 22 heard by the Court], and all current and former employees (whether exempt or non-exempt) of
 23 Defendant in the State of California from March 16, 2020 to [DATE – the date on which
 24 Plaintiffs' motion for Preliminary Approval of this Settlement is first scheduled to be heard by
 25 the Court]—excluding only those persons listed in **Exhibit 1**.

26 7. The Court appoints Plaintiffs as class representatives for the Settlement Classes.

27 8. The Court appoints Class Counsel identified in the Agreement as class counsel for
 28 the Settlement Classes, finding that Class Counsel is adequate and qualified, and has, and can

1 continue, to fully and faithfully represent the interests of Plaintiffs and the Settlement Class
2 Members.

3 9. Settlement Class Members shall be paid their respective shares of the Net
4 Settlement Sum, as provided in the Agreement.

5 10. The portion of the PAGA Settlement Amount to be paid to the California Labor
6 and Workforce Development Agency (“LWDA”) and the portion of the PAGA Settlement
7 Amount to be paid to PAGA Group Members shall be paid as provided in the Agreement. The
8 LWDA and all PAGA Group Members shall be and hereby are bound by this Final Approval
9 Order and Judgment.

10 11. The Settlement Administrator shall timely and properly prepare and deliver
11 necessary tax documentation to all necessary parties and to report all necessary information to
12 the applicable government entities as required by law.

13 12. The unopposed application of Class Counsel’s Fee and Expense Award is hereby
14 granted. The Court finds that the Class Counsel’s attorneys’ fees are reasonable from the
15 perspective of the percentage-of-recovery method and that Class Counsel’s hourly rates are
16 reasonable based on evidence of Class Counsel’s experience, services rendered, and market rates
17 for San Bernardino attorneys with comparable experience. The Court finds that Class Counsel’s
18 litigation costs and expenses are reasonable and were reasonably incurred in the prosecution of
19 this action. The sum of \$ _____ as attorneys’ fees, and costs not to exceed the sum of
20 \$ _____, shall be paid to Class Counsel, with payment to be made as provided for in the
21 Agreement. A General Release Payment in the amount of \$ _____ shall be paid to Plaintiff
22 Yesenia Gutierrez, and a General Release Payment in the amount of \$ _____ shall be paid
23 to plaintiff Kathy Chan, with the payments to be made as provided for in the Agreement.
24 Settlement Services, Inc. shall be paid Settlement Administration Costs of \$ _____, in
25 accordance with the terms of the Agreement. Except as expressly set forth in this Final Approval
26 Order and Judgment, the Parties shall bear their own attorneys’ fees and costs.

27 13. Any portion of the Settlement Fund remaining after administration of the
28 Settlement has been completed shall be transmitted to [REDACTED], as provided in the

1 Agreement.

2 14. The Settlement Administrator is hereby directed to make the payments set forth
3 herein, in accordance with the terms and conditions of the Agreement.

4 15. By no later than _____, the Settlement Administrator shall file
5 a report setting forth (1) the total amount of money paid to the Settlement Class Members as
6 Class Settlement Awards, (2) the total amount of money paid to PAGA Group Members as
7 PAGA Settlement Awards, (3) the portion of the PAGA Settlement Amount paid to the LWDA,
8 and (4) the Fee and Expense Award paid to Class Counsel. (Code Civ. Proc., § 384, subd. (b).)

9 16. All Class Members, except those who timely opted out of the Settlement (listed in
10 Exhibit 1 hereto), are bound by this Final Approval Order and Judgment, and by the previously
11 approved Agreement. Each Settlement Class Member is hereby deemed to have fully, finally,
12 and forever released, relinquished, and discharged Defendant and all Released Parties, as defined
13 in the Agreement, from the Released Claims described in the Agreement.

14 17. All PAGA Group Members and the LWDA are bound by this Final Approval
15 Order and Judgment, and by the previously approved Agreement. The State of California is
16 hereby deemed to have expressly released, waived, and relinquished the Released PAGA Claims.
17 All PAGA Group Members are hereby barred from bringing, joining, or otherwise participating
18 in a PAGA representative action or otherwise making, joining, or otherwise participating in a
19 claim against any of the Released Parties for any of the Released PAGA Claims. The State of
20 California shall be barred from pursuing recovery of any civil penalties from any of the Released
21 Parties for any of the Released PAGA Claims.

22 18. This Final Approval Order and Judgment, the Agreement, the Settlement it
23 reflects, and any and all acts, statements, documents, or proceedings relating to the Settlement
24 are not, and shall not be construed as, or used as an admission by Defendant, or a finding by this
25 Court of any fault, wrongdoing, or liability on the part of Defendant, or of the validity of any of
26 the Released Claims or the Released PAGA Claims or of the existence or amount of any
27 damages.

28 19. In the event the Effective Date does not occur, this Final Approval Order and

1 Judgment shall be null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly
2 provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of
3 Plaintiffs, Settlement Class Members, and Defendant.

4 20. Judgment is hereby entered in accordance with the Agreement and the Settlement.
5 Without affecting the finality of this Final Approval Order and Judgment in any way, the Court
6 shall retain jurisdiction over the implementation of the Settlement, including enforcement and
7 administration of the Agreement and the releases given in connection therewith, and any other
8 matters related or ancillary to the foregoing.

9 IT IS SO ORDERED, ADJUDGED, AND DECREED.

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12 Dated: _____

The Honorable Christian Towns
Judge of the Superior Court

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Certificate Of Completion

Envelope Id: 5DE56862-CA62-41FD-AF21-18B7670D8032
 Subject: Complete with Docusign: Gutierrez v. Esri - Long-Form Settlement Agreement.pdf
 Source Envelope:
 Document Pages: 61
 Certificate Pages: 4
 AutoNav: Enabled
 Envelopeld Stamping: Disabled
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed

 Envelope Originator:
 Kwan Park
 707 Wilshire Boulevard
 Los Angeles, 90013
 BPark@mofo.com
 IP Address: 204.130.0.9

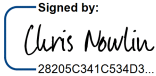
Record Tracking

Status: Original
 2/10/2025 5:50:49 PM
 Holder: Kwan Park
 BPark@mofo.com
 Location: DocuSign

Signer Events

Chris Nowlin
 CNowlin@esri.com
 Director, HR
 Security Level: Email, Account Authentication (None)

Signature

Signed by:

 28205C341C534D3...
 Signature Adoption: Pre-selected Style
 Using IP Address: 198.102.58.186

Timestamp

Sent: 2/10/2025 5:54:06 PM
 Resent: 2/12/2025 11:29:17 AM
 Viewed: 2/12/2025 11:37:06 AM
 Signed: 2/12/2025 11:37:23 AM

Electronic Record and Signature Disclosure:
 Accepted: 2/12/2025 11:37:06 AM
 ID: d02dbb76-9014-4163-8f9e-1af4800c4da9

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/10/2025 5:54:06 PM
Certified Delivered	Security Checked	2/12/2025 11:37:06 AM
Signing Complete	Security Checked	2/12/2025 11:37:23 AM
Completed	Security Checked	2/12/2025 11:37:23 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Morrison and Foerster LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Morrison and Foerster LLP:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: johnmaglio@mofo.com

To advise Morrison and Foerster LLP of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at rgonzalez@mofo.com and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Morrison and Foerster LLP

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to johnmaglio@mofo.com and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Morrison and Foerster LLP

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to johnmaglio@mofo.com and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Morrison and Foerster LLP as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Morrison and Foerster LLP during the course of your relationship with Morrison and Foerster LLP.