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25 individually and on behalf of all others similarly  
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CHRISTIE WINSTON, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

EXECAP, INC., a California Limited Liability Corporation, EXECUTIVE AUTOPILOTS, INC., a California Corporation, ANDREY KALCHENKO, an individual, and DOES 1 through 20 inclusive.

CASE NO. 34-2018-00234725-CU-OE-GDS

[Assigned for limited purposes to the Hon. Richard K. Sueyoshi, Dept. 28]

**CLASS ACTION**

**CLASS ACTION SETTLEMENT AGREEMENT**

Complaint Filed: June 13, 2018  
Trial Date: None.

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**CLASS ACTION SETTLEMENT AGREEMENT**

IT IS HEREBY STIPULATED, by and among Plaintiff CHRISTIE WINSTON, on behalf of herself and the Settlement Class Members on the one hand, and Defendants EXECAP, INC., EXECUTIVE AUTOPILOTS, INC. and ANDREY KACHENKO (“Defendants”), on the other hand, subject to the approval of the Court, that the Action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Class Action Settlement Agreement (“Agreement”), and subject to the definitions, recitals and terms set forth herein, which by this reference become an integral part of this Agreement.

**DEFINITIONS**

- 1. “Action” means the matter of *Christie Winston v. Execap Inc. et al*, Case No. 34-2018-00234725-CU-OE-GDS filed on June 13, 2018, in Sacramento County Superior Court.
- 2. “Class Counsel” means Makarem & Associates, APLC.
- 3. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action, and actual expenses and costs incurred in connection with the Action paid from the Gross Settlement Amount.
- 4. “Class Information” means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall include: each Settlement Class Member’s full name; last known address; last known home telephone number; Social Security Number; start date of employment; end date of employment; and the total work weeks worked by the Settlement Class Member as a non-exempt employee for Defendant during the Class Period (“Total Work Weeks”).
- 5. “Class Period” means the period from June 13, 2014 through the date the Court grants preliminary approval of settlement.
- 6. The “Class” means all non-exempt hourly employees who worked for Defendants in the State of California during the Class Period. As of October 1, 2019, the total number of Class Members was twenty three (23).

1           7.     “Class Representative Enhancement Award” means the amount that the Court  
2 authorizes to be paid to Plaintiff, in addition to his Individual Settlement Payment, in  
3 recognition of his effort and risk in assisting with the prosecution of the Action.

4           8.     “Court” means the Sacramento County Superior Court.

5           9.     “Defendants” mean EXECAP, INC., EXECUTIVE AUTOPILOTS, INC.,  
6 and ANDREY KALCHENKO.

7           10.    “Defense Counsel” means Smith, McDowell & Powell ALC and Greene &  
8 Roberts LLP.

9           11.    “Effective Date” means either (a) the date sixty (60) days after the entry of the  
10 Final Judgment and order finally approving the Settlement, if no motions for reconsideration  
11 and no appeals or other efforts to obtain review have been filed, or (b) in the event that a  
12 motion for reconsideration, an appeal or other effort to obtain review of the Final Judgment and  
13 order finally approving the Settlement, the date sixty (60) days after such reconsideration,  
14 appeal or review has been finally concluded and is no longer subject to review, whether by  
15 appeal, petition for rehearing, petition for review or otherwise and the Settlement has not been  
16 materially modified. A “material modification” shall not include any change to the Class  
17 Counsel Award, Class Representative Enhancement Award, or amount awarded for Settlement  
18 Administration Costs.

19           12.    “Gross Settlement Amount” means Sixty Thousand Dollars (\$60,000).

20           13.    “Individual Settlement Payment” means the amount payable from the Net  
21 Settlement Amount to each Settlement Class Member who does not request to be excluded  
22 from this Settlement.

23           14.    “Net Settlement Amount” means the Gross Settlement Amount, less Class  
24 Counsel Award, Class Representative Enhancement Award, Labor Workforce Development  
25 Agency’s (“LWDA”) portion of the PAGA Payment, and Settlement Administrator Costs.

26           15.    “Notice” means the Notice of Pendency of Class Action Settlement  
27 (substantially in the form attached as **Exhibit 1**).

28     ///

1           16.   “PAGA Payment” means a payment made to the California Labor and  
2 Workforce Development Agency in exchange for the release of claims under the Private  
3 Attorneys General Act of 2004.

4           17.   “Parties” means Plaintiff and Defendants, collectively, and “Party” shall mean  
5 either Plaintiff or Defendants.

6           18.   “Payment Ratio” means the respective Total Work Weeks for each Settlement  
7 Class Member divided by the sum of Total Work Weeks for all Settlement Class Members.

8           19.   “Plaintiff” means CHRISTIE WINSTON.

9           20.   “Released Claims” means any and all claims alleged in the operative complaint  
10 including all debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney’s  
11 fees, damages, action or causes of action, contingent or accrued, for, or that relate to the claims  
12 alleged in the operative complaint for the Class Period, including claims under the California  
13 Labor Code Sections 201, 202, 203, 204, 218, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194,  
14 and civil penalties under the Labor Code Private Attorneys General Act, Cal. Labor Code §  
15 2698, *et seq.*, applicable Industrial Welfare Commission Wage Order(s), including, without  
16 limitation, Wage Order 9-2001, Business and Professions Code § 17200, *et seq.*. The claims  
17 released by the Settlement Class shall include all claims for unpaid overtime wages, failure to  
18 provide meal or rest periods, unpaid premiums for missed meal or rest periods, failure to pay all  
19 wages earned every pay period, untimely payment of wages, inaccurate wage statements,  
20 record keeping violations, failure to pay all wages owed upon termination or resignation, as  
21 well as any damages, restitution, civil penalties, statutory penalties, taxes, interest or attorneys’  
22 fees resulting therefrom and limited to the claims alleged in the operative complaint.

23           21.   “Released Parties” means Defendants Execap Inc. and Executive Autopilots,  
24 Inc., and their respective parent companies, subsidiaries, affiliates, shareholders, members,  
25 agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers,  
26 attorneys and any past, present or future officers, directors and employees) predecessors,  
27 successors, and assigns, as well as Defendant Andrey Kalchenko, individually and in his  
28 capacity as an owner, officer, or director of Execap, Inc.

1 22. “Response Deadline” means the date thirty (30) calendar days after the  
2 Settlement Administrator mails the Notice to Settlement Class Members and the last date on  
3 which Settlement Class Members may postmark written requests for exclusion or a Notice of  
4 Objection to the Settlement. For Settlement Class Members who receive re-mailed Class  
5 Notices, the Response Deadline shall mean forty-five (45) calendar days after the Settlement  
6 Administrator’s initial mailing of the Notice of Settlement to Class Members.

7 23. “Settlement” means the disposition of the Action pursuant to this Agreement.

8 24. “Settlement Administration Costs” means the amount to be paid to the  
9 Settlement Administrator from the Gross Settlement Amount for administration of this  
10 Settlement.

11 25. “Settlement Administrator” means CPT Group.

12 26. “Settlement Class” or “Settlement Class Members” means all current and former  
13 hourly, non-exempt hourly paid employees employed by Defendants in California during the  
14 Class Period who did not submit a valid and timely request for exclusion.

15 **RECITALS**

16 27. Class Certification. The Parties stipulate and agree to the certification of this  
17 Action for purposes of this Settlement only. Should the Settlement not become final and  
18 effective as herein provided, class certification shall immediately be set aside and the  
19 Settlement Class immediately decertified. The Parties’ willingness to stipulate to class  
20 certification as part of the Settlement shall have no bearing on, and shall not be admissible in or  
21 considered in connection with, the issue of whether a class should be certified in a non-  
22 settlement context in this Action and shall have no bearing on, and shall not be admissible or  
23 considered in connection with, the issue of whether a class should be certified in any other  
24 lawsuit.

25 28. Procedural History. On June 13, 2018, Plaintiff filed a putative class action  
26 against Defendants for various wage and hour violations. Following an informal exchange of  
27 information to assess potential class-wide damages, the Parties participated in a voluntary  
28 settlement conference with Judge Ben Davidian in Department 59 on October 4, 2019.

1 Although the Parties did not reach a settlement at the conference, they continued to negotiate  
2 and soon after, in or around November 2019, entered in to a memorandum of understanding  
3 setting forth the materials terms of this Settlement.

4 **TERMS OF AGREEMENT**

5 29. Settlement Consideration. Defendants shall pay a Gross Settlement Amount of  
6 Sixty Thousand Dollars (\$60,000.00), allocated as follows: Executive Autopilots, Inc. shall pay  
7 \$18,000.00 and Execap, Inc. shall pay \$42,000.00. The following will be paid out of the Gross  
8 Settlement Amount: the sum of the Individual Settlement Payments, the Class Representative  
9 Enhancement Award, Class Counsel fees and costs, the PAGA Payment, and the Settlement  
10 Administration Costs, as specified in this Agreement. Except for any employer portion of  
11 required taxes due on the Individual Settlement Payments, Defendants shall not be required to  
12 pay more than the Gross Settlement Amount.

13 30. Release As To All Class Members. As of the Effective Date, Plaintiff and the  
14 Settlement Class Members who are not excluded from this Settlement, on behalf of themselves  
15 and each of their heirs, representatives, successors, assigns and attorneys, hereby release  
16 Defendants and Released Parties from the Released Claims as consideration for Defendants'  
17 payment of the Gross Settlement Amount.

18 31. Release As To Plaintiff. In addition to the Released Claims, as of the Effective  
19 Date, Plaintiff, on behalf of herself and her heirs, representatives, successors, assigns and  
20 attorneys, hereby release Defendants and Released Parties from all claims for injuries,  
21 damages, or losses to their own person and property, real or personal (whether those injuries,  
22 damages, or losses are known or unknown, foreseen or unforeseen, patent or latent), that they  
23 may have against Defendants or Released Parties. Plaintiff specifically waives application of  
24 Civil Code Section 1542, which provides:

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

1 Plaintiff understands and acknowledges that in consequence of this waiver of Civil  
2 Code Section 1542, even if she should eventually suffer additional damages arising out of the  
3 facts referred to in the Action, she will not be able to make any claim for those damages.  
4 Furthermore, Plaintiff acknowledges that she consciously intends these consequences even as  
5 to claims for damages that may exist as of the date of this release but that she does not know  
6 exist, and that, if known, would materially affect her decision to execute this release, regardless  
7 of whether her lack of knowledge is the result of ignorance, oversight, error, negligence, or any  
8 other cause.

9 32. Tax Liability. The Parties make no representations as to the tax treatment or  
10 legal effect of the payments called for hereunder, and Settlement Class Members are not  
11 relying on any statement or representation by the Parties in this regard.

12 33. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this  
13 section, the “Acknowledging Party” and each Party to this Agreement other than the  
14 Acknowledging Party, an “Other Party”) acknowledges and agrees that (1) no provision of this  
15 Agreement, and no written communication or disclosure between or among the Parties or their  
16 attorneys and other advisers, is or was intended to be, nor shall any such communication or  
17 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of  
18 United States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the  
19 Acknowledging Party (a) has relied exclusively upon his, her or its own, independent legal and  
20 tax counsel for advice (including tax advice) in connection with this Agreement, (b) has not  
21 entered into this Agreement based upon the recommendation of any other party or any attorney  
22 or advisor to any Other Party, and (c) is not entitled to rely upon any communication or  
23 disclosure by any attorney or adviser to any Other Party to avoid any tax penalty that may be  
24 imposed on the Acknowledging Party; and (3) no attorney or adviser to any Other Party has  
25 imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax  
26 strategies (regardless of whether such limitation is legally binding) upon disclosure by the  
27 Acknowledging Party of the tax treatment or tax structure of any transaction, including any  
28 transaction contemplated by this Agreement.

1           34.   Notice and Preliminary Approval of Settlement. As part of this Settlement,  
2 Plaintiff will request that the Court: (a) grant preliminary approval of the Settlement, (b) certify  
3 a Settlement Class, (c) approve distribution of Notice to Settlement Class Members, and (d)  
4 grant final approval of the Settlement. Plaintiff shall request a hearing before the Court to  
5 obtain preliminary approval of the Settlement. In conjunction with the hearing, Plaintiff will  
6 submit this Agreement, which sets forth the terms of this Settlement, and will include a  
7 proposed Notice, as necessary to implement the Settlement.

8           35.   Settlement Administration. Within fifteen (15) calendar days after the Court  
9 grants preliminary approval of this Agreement, Defendants shall provide the Settlement  
10 Administrator with the Class Information for purposes of mailing the Notice to Settlement  
11 Class Members.

12           a.    Notice By First Class U.S. Mail with Business Reply Mail Postage.

13           Upon receipt of the Class Information, the Settlement Administrator will  
14 perform a search based on the National Change of Address Database to update  
15 and correct any known or identifiable address changes. Within fifteen (15)  
16 calendar days after receiving the Class Information from Defendants as provided  
17 herein, the Settlement Administrator shall mail copies of the Notice to all  
18 Settlement Class Members via regular First Class U.S. Mail. The Settlement  
19 Administrator shall exercise its best judgment to determine the current mailing  
20 address for each Settlement Class Member. The address identified by the  
21 Settlement Administrator as the current mailing address shall be presumed to be  
22 the best mailing address for each Settlement Class Member.

23           i.    Undeliverable Notices. Any Notice returned to the Settlement  
24 Administrator as non-delivered on or before the Response Deadline shall  
25 be re-mailed to the forwarding address affixed thereto. If no forwarding  
26 address is provided, the Settlement Administrator shall promptly attempt  
27 to determine a correct address by use of skip-tracing, or other search using  
28 the name, address and/or Social Security number of the respective



1 Settlement Class Member, and shall then perform a re-mailing, if another  
2 mailing address is identified by the Settlement Administrator. If a  
3 Settlement Class Member's Notice is returned to the Settlement  
4 Administrator more than once as non-deliverable on or before the  
5 Response Deadline, then an additional Notice need not be re-mailed and  
6 the Settlement Class Member is deemed to have received Notice.

7 b. No Claim Form Necessary. All Settlement Class Members who do not  
8 request to be excluded from the Settlement will receive Individual Settlement  
9 Payments from the Net Settlement Amount; submission of a claim form is not  
10 necessary to receive an Individual Settlement Payment. The estimated Individual  
11 Settlement Payments will be stated in the Notice.

12 i. Disputes Regarding Individual Settlement Payments. Settlement  
13 Class Members will have the opportunity, should they disagree with  
14 Defendant's records regarding their employment dates or Total Work  
15 Weeks, to provide documentation and/or an explanation to correct the  
16 information and seek modification of their estimated Individual Settlement  
17 Payments. The employment dates and Total Work Weeks provided by  
18 Defendants are presumed to be correct unless documentation is timely  
19 provided to show otherwise. If there is a dispute, the Settlement  
20 Administrator will consult with the Parties to determine whether an  
21 adjustment is warranted. The Settlement Administrator shall determine the  
22 eligibility for, and the amounts of, any Individual Settlement Payments  
23 under the terms of this Agreement. If either of the Parties disagree with  
24 the Settlement Administrator's determination of a Settlement Class  
25 Members' eligibility for, and the amounts of, any Individual Settlement  
26 Payment due to a Settlement Class Member, they may request the Court  
27 for to resolve the Settlement Class Member's dispute. If the dispute is  
28 submitted to the Court, the Court's determination of a Settlement Class

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Members' eligibility for, and the amounts of, any Individual Settlement Payment due to a Settlement Class Member, shall be final and binding on the Settlement Class Member and the Parties.

ii. Disputes Regarding Administration of Settlement. Any disputes not resolved concerning the administration of the Settlement will be resolved by the Court, under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

c. Exclusions. The Notice shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a written request for exclusion by the Response Deadline. The written request for exclusion: (1) must contain the name, address, telephone number and the last four digits of the Social Security number and/or the Employee ID number of the person requesting exclusion, (2) must be signed by the Settlement Class Member; (3) must be postmarked by the Response Deadline and returned to the Settlement Administrator at the specified address; and (4) must describe the Settlement Class Member's intent to request exclusion, opt out, or words to that effect. If a signed request for exclusion is not timely submitted stating the name and address of the Settlement Class Member, it will not be deemed valid for exclusion from this Settlement. The date of the postmark on the return mailing envelope of the request for exclusion shall be the exclusive means used to determine whether the request for exclusion was timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Settlement Class Members who fail to submit a valid and timely written request for exclusion on or before the Response Deadline shall be

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bound by all terms of the Settlement and any Judgment entered in this Action, if the Settlement is finally approved by the Court.

i. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel with a complete list of all Settlement Class Members who have timely submitted written requests for exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Settlement Class to submit requests for exclusion from the Settlement.

d. Objections. The Notice shall state that Settlement Class Members who wish to submit a written objection to the Settlement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline. The date of the postmark on the return envelope shall be the exclusive means for determining that a Notice of Objection was timely submitted. The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the last four digits of the Settlement Class Member’s Social Security number and/or the Employee ID number; and (3) the basis for the objection. Class Counsel shall include all objections received and Plaintiff’s response(s) with Plaintiff’s motion for final approval of the Settlement. Class Counsel shall not represent any Settlement Class Members with respect to any such objections. The Notice shall also state that Settlement Class Members may also appear at and raise an objection at the hearing on Final Approval regardless of whether they have submitted a written objection to the settlement.

e. No Solicitation of Settlement Objections or Exclusions. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit either Notices of Objection to

1 the Settlement or Requests for Exclusion from the Settlement, or to appeal from  
2 the Court's Final Judgment.

3 36. Funding and Allocation of Gross Settlement Amount. Within ten (10) calendar  
4 days after the Effective Date, Defendants shall provide the Gross Settlement Amount to the  
5 Settlement Administrator. Payments from the Gross Settlement Amount shall be made, as  
6 specified in this Agreement and approved by the Court, for: (1) Individual Settlement Payments  
7 to Settlement Class Members who do not request to be excluded, (2) Class Representative  
8 Enhancement Award, (3) Class Counsel Award, (4) PAGA Payment, and (6) the Settlement  
9 Administration Costs. Defendants' share of employer taxes on the wage portion of the  
10 Individual Settlement Payments will be paid in addition to the Gross Settlement Amount.

11 a. Individual Settlement Payments. Individual Settlement Payments will be  
12 paid from the Net Settlement Amount and shall be paid pursuant to the terms set  
13 forth herein. Individual Settlement Payments shall be mailed by regular First  
14 Class U.S. Mail to the respective Settlement Class Member's last known mailing  
15 address within fourteen (14) calendar days after Defendants provide funds to the  
16 Settlement Administrator for disbursement under this Agreement. Individual  
17 Settlement Payments will be allocated as follows: 33.33% as wages and 66.66%  
18 as penalties. Any checks issued to Settlement Class Members shall remain valid  
19 and negotiable for one hundred and eighty (180) days from the date of their  
20 issuance. Defendants are responsible for the employer's portion of payroll taxes  
21 on the portion of the payment that is treated as wages, separate from the amount  
22 of the gross settlement.

23 i. Calculation of Individual Settlement Payments. Defendants will  
24 calculate the Total Work Weeks by each Settlement Class Member. The  
25 respective Total Work Weeks for each Settlement Class Member will be  
26 divided by the Total Work Weeks for all Settlement Class Members who  
27 do not opt out, resulting in the Payment Ratio for each Settlement Class  
28 Member. Each Settlement Class Member's Payment Ratio is then

1 multiplied by the Net Settlement Amount to determine his or her  
2 Individual Settlement Payment. Each Individual Settlement Payment  
3 will be reduced by any legally mandated deductions for each Settlement  
4 Class Member. Settlement Class Members (other than Plaintiff) are not  
5 eligible to receive any compensation under the Settlement other than  
6 Individual Settlement Payments.

7 b. Unpaid Cash Residue or Unclaimed/Abandoned Class Member Funds.

8 Any residue from uncashed Settlement Awards after the expiration date of the  
9 Individual Settlement Payments will be transferred to the California State  
10 Controller's Office and held in trust for such Settlement Class Members  
11 pursuant to California Unpaid Property Law.

12 c. Class Representative Enhancement Award. Subject to Court approval, in  
13 exchange for the release of all Released Claims, a general release under  
14 Section 1542 of the California Civil Code, and for her time and effort in  
15 bringing and prosecuting this matter, Plaintiff shall be paid up to Five Thousand  
16 Dollars (\$5,000.00), subject to Court approval. The Class Representative  
17 Enhancement Award shall be paid to Plaintiff from the Gross Settlement  
18 Amount no later than fourteen (14) calendar days after Defendants provide  
19 funds to the Settlement Administrator for disbursement under this Agreement.  
20 Any portion of the requested Class Representative Enhancement Award that is  
21 not awarded to the Class Representative shall be part of the Net Settlement  
22 Amount and shall be distributed to Settlement Class Members as provided in  
23 this Agreement. The Settlement Administrator shall issue an IRS Form 1099 –  
24 MISC to Plaintiff for his Class Representative Enhancement Award. Plaintiff  
25 shall be solely and legally responsible to pay any and all applicable taxes on his  
26 Class Representative Enhancement Award and shall hold harmless Defendants  
27 and Released Parties from any claim or liability for taxes, penalties, or interest  
28 arising as a result of the Class Representative Enhancement Award. The Class

1 Representative Enhancement Award shall be in addition to the Plaintiff's  
2 Individual Settlement Payment as a Settlement Class Member.

3 d. Class Counsel Award. Defendants agree not to oppose or object to any  
4 application or motion by Class Counsel for attorneys' fees not to exceed Twenty  
5 Thousand Dollars (\$20,000.00) of the Gross Settlement Amount. Defendants  
6 also agree not to oppose any application or motion by Class Counsel for the  
7 reimbursement of actual costs of up to Four Thousand, Three Hundred Fifty  
8 Dollars (\$4,350.00), subject to submission of records to the Court, associated  
9 with Class Counsel's prosecution of this Action from the Gross Settlement  
10 Amount, and Class Counsel agrees not to appeal any award of attorneys' fees or  
11 costs. Any portion of the requested Class Counsel Award that is not awarded to  
12 Class Counsel shall be part of the Net Settlement Amount and distributed to  
13 Settlement Class Members as provided in this Agreement. So long as there are  
14 no objections, Class Counsel shall be paid any Court-approved fees and costs no  
15 later than fourteen (14) calendar days after Defendants provide funds to the  
16 Settlement Administrator for disbursement under this Agreement. Class  
17 Counsel shall be solely and legally responsible to pay all applicable taxes on the  
18 payment made pursuant to this paragraph. The Settlement Administrator shall  
19 issue an IRS Form 1099 – MISC to Class Counsel for the payments made  
20 pursuant to this paragraph. This Settlement is not contingent upon the Court  
21 awarding Class Counsel any particular amount in attorneys' fees and costs.

22 e. PAGA Payment. Two Thousand Dollars (\$2,000.00) shall be allocated  
23 to the release of the PAGA claim. From that allocation, the Settlement  
24 Administrator shall make the PAGA Payment to the California Labor and  
25 Workforce Development Agency in the amount of One Thousand Five Hundred  
26 Dollars (\$1,500.00). The PAGA Payment will be paid from the Gross  
27 Settlement Amount within fourteen (14) calendar days after Defendants provide  
28 funds to the Settlement Administrator for disbursement under this Agreement.

1 The remaining one Five Hundred Dollars (\$500.00) of the amount is allocated to  
2 the release of Plaintiff's PAGA claim shall be included as part of the Net  
3 Settlement Amount for payment to Settlement Class Members.

4 f. Settlement Administration Costs. The Settlement Administrator shall be  
5 paid for the costs of administration of the Settlement from the Gross Settlement  
6 Amount. The capped cost of administration for this Settlement is Eight  
7 Thousand Dollars (\$8,000). The Settlement Administrator shall provide the  
8 Parties with a declaration to support the cost of administration. The Settlement  
9 Administrator shall be paid the Settlement Administration Costs no later than  
10 fourteen (14) calendar days after Defendants provide funds to the Settlement  
11 Administrator for disbursement under this Agreement. The Settlement  
12 Administrator, on Defendants' behalf, shall have the authority and obligation to  
13 make payments, credits and disbursements, including in the manner set forth  
14 herein, to Settlement Class Members and the Internal Revenue Service,  
15 calculated in accordance with the methodology set out in this Agreement and  
16 orders of the Court.

17 i. The Parties agree to cooperate in the Settlement Administration  
18 process and to make all reasonable efforts to control and minimize the  
19 cost and expenses incurred in administration of the Settlement. The  
20 Parties each represent they do not have any financial interest in the  
21 Settlement Administrator or otherwise have a relationship with the  
22 Settlement Administrator that could create a conflict of interest.

23 ii. The Settlement Administrator shall be responsible for:  
24 processing and mailing payments to the Plaintiff, Class Counsel,  
25 Settlement Class Members, the Internal Revenue Service, the Labor and  
26 Workforce Development Agency, California State Treasury; printing and  
27 mailing the Notice to the Settlement Class Members, as directed by the  
28 Court; receiving and reporting the requests for exclusion and Notices of

1                   Objection submitted by Settlement Class Members; completing all tax  
2                   reporting, withholdings, and payments to the Internal Revenue Service;  
3                   distributing all tax forms for payments under this Agreement; providing  
4                   declaration(s) and reports as necessary in support of preliminary and  
5                   final approval of this Settlement; and other tasks as the Parties mutually  
6                   agree or the Court orders the Settlement Administrator to perform both  
7                   before and after distribution of the Gross Settlement Amount. The  
8                   Settlement Administrator shall keep the Parties timely apprised of the  
9                   performance of all Settlement Administrator responsibilities.

10                  g.       No person shall have any claim against Defendants, Defense Counsel,  
11                  Plaintiff, Settlement Class Members, Class Counsel or the Settlement  
12                  Administrator based on distributions and payments made in accordance with this  
13                  Agreement.

14                  37.       Final Settlement Approval Hearing and Entry of Final Judgment. Upon  
15                  expiration of the Response Deadline, with the Court's permission, a Final Approval/Settlement  
16                  Fairness Hearing shall be conducted to determine final approval of the Settlement along with  
17                  the amount properly payable for (i) the Class Counsel Award, (ii) the Class Representative  
18                  Enhancement Award, (iii) Individual Settlement Payments, (iv) the Settlement Administration  
19                  Cost, and (v) the PAGA Payment. Pursuant to California Rule of Court 3.769(h), after granting  
20                  final approval, the Court shall retain jurisdiction over the Parties to enforce the terms of the  
21                  judgment.

22                  38.       Defendants' Option to Terminate Settlement. If more than ten percent (10%) of  
23                  all Settlement Class Members submit written requests for exclusion from the Settlement,  
24                  Defendants shall have, in their sole discretion, the option to terminate this Settlement. In such  
25                  case, Defense Counsel will notify Class Counsel of its decision to terminate the Settlement  
26                  within thirty (30) calendar days after the expiration of the opt out period. Further, to the extent  
27                  Defendants have made any payments under this Agreement, all payments shall be fully  
28                  refunded to Defendants, except that any fees already incurred by the Settlement Administrator



1 shall be paid equally between the Parties, and the Parties shall proceed in all respects as though  
2 this Agreement had not been executed.

3 39. Nullification of Settlement Agreement. In the event: (i) the Court does not enter  
4 an order for preliminary approval; (ii) the Court does not enter an order for final approval;  
5 (iii) the Court does not enter a Final Judgment, (iv) the Effective Date is not triggered, or  
6 (v) the Settlement does not become final for any other reason, this Settlement Agreement shall  
7 be null and void and any order or judgment entered by the Court in furtherance of this  
8 Settlement shall be treated as void from the beginning. In such case, Defendants shall not make  
9 any payment under this Agreement, and the Parties shall proceed in all respects as if this  
10 Agreement had not been executed, except that any fees already incurred by the Settlement  
11 Administrator shall be paid by the Parties in equal shares.

12 40. Defendants' Duty to Augment Settlement. To the extent the number of class  
13 members increases by more than 10% before the date the notice of class settlement is  
14 distributed to the putative class members, Defendants shall be required to increase the Gross  
15 Settlement Amount by the percentage that the number of class members has increased over  
16 10% (i.e., if the number of class members increases by 15% by the date of the distribution of  
17 the notice of class settlement, then Defendants will be required to increase the gross Settlement  
18 Amount by 5%). Any increase in the Gross Settlement Amount as a result of this provision  
19 shall be the sole responsibility of Execap, Inc. and/or Andrey Kalchenko.

20 41. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement  
21 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and  
22 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits  
23 (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class  
24 Members.

25 42. Publicity. Plaintiff and Class Counsel agree not to file a press release regarding  
26 the settlement, respond to press/media inquiries regarding the settlement prior to the Court  
27 granting Final Approval of the settlement, or otherwise publicize the terms of this Settlement,  
28 except in Court filings. Plaintiff will not disparage Defendants or their counsel. Plaintiff will

1 not speculate about the motivations behind the decision of Defendants to settle this Action.

2 43. No Admission By Defendants. Defendants deny any and all claims alleged in  
3 this Action and deny all wrongdoing whatsoever. This Agreement is not a concession or  
4 admission of any liability or wrongdoing by Defendants, and it shall not be used against  
5 Defendants as an admission with respect to any claim of fault, concession or omission by  
6 Defendants.

7 44. Exhibits and Headings. The terms of this Agreement include the terms set forth  
8 in the attached exhibit, which is incorporated by this reference as though fully set forth herein.  
9 The exhibit to this Agreement is an integral part of the Settlement; however, the terms of this  
10 Agreement control in case of conflict. The descriptive headings of any paragraphs or sections  
11 of this Agreement are inserted for convenience of reference only.

12 45. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the  
13 Action, except such proceedings necessary to implement and complete the Settlement, pending  
14 the Final Approval/Settlement Fairness Hearing to be conducted by the Court.

15 46. Amendment or Modification. This Agreement may be amended or modified  
16 only by a written instrument signed by counsel for all Parties or their successors-in-interest.

17 47. Entire Agreement. This Agreement and the attached exhibit constitute the entire  
18 Agreement among these Parties, and no oral or written representations, warranties or  
19 inducements have been made to any Party concerning this Agreement or its exhibit other than  
20 the representations, warranties and covenants contained and memorialized in the Agreement  
21 and its exhibit.

22 48. Authorization to Enter Into Settlement Agreement. Counsel for the Parties  
23 warrant and represent they are expressly authorized by the Party whom they each represent to  
24 negotiate this Agreement and to take all appropriate actions required or permitted to be taken  
25 by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other  
26 documents required to effectuate the terms of this Agreement. The Parties and their counsel  
27 will cooperate with each other and use their best efforts to effect the implementation of the  
28 Settlement. In the event the Parties are unable to reach an agreement on the form or content of

1 any document needed to implement the Settlement, or on any supplemental provisions that may  
2 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance  
3 of the Court to resolve such disagreement. The person signing this Agreement on behalf of  
4 Defendants represents and warrants that he/she is authorized to sign this Agreement on behalf  
5 of Defendants. The person signing this Agreement on behalf of Plaintiff represents and  
6 warrants that he/she is authorized to sign this Agreement and that he/she has not assigned any  
7 claim, or part of a claim, covered by this Settlement to a third-party.

8 49. Binding on Successors and Assigns. This Agreement shall be binding upon, and  
9 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

10 50. California Law Governs. All terms of this Agreement and the exhibit hereto  
11 shall be governed by and interpreted according to the laws of the State of California.

12 51. Counterparts. This Agreement may be executed in one or more counterparts.  
13 All executed counterparts together shall be deemed to be one and the same instrument.

14 52. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this  
15 Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this  
16 Settlement after extensive arms-length negotiations, taking into account all relevant factors,  
17 present and potential.

18 53. Jurisdiction of the Court. In accordance with California Rule of Court 3.769(h),  
19 the Parties agree that the Court shall retain jurisdiction with respect to the interpretation,  
20 implementation and enforcement of the terms of this Agreement and all orders and judgments  
21 entered in connection therewith, and the Parties and their counsel hereto submit to the  
22 jurisdiction of the Court for purposes of interpreting, implementing and enforcing the  
23 Settlement embodied in this Agreement and all orders and judgments entered in connection  
24 therewith.

25 54. Invalidity of Any Provision. Before declaring any provision of this Agreement  
26 invalid, the Court shall first attempt to construe the provisions valid to the fullest extent  
27 possible consistent with applicable precedents so as to define all provisions of this Agreement  
28 valid and enforceable.

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55. Advice of Attorney. Each Party warrants and represents that in executing this Agreement, they have relied on legal advice from the attorney of their choice; that the terms of this Agreement have been read and its consequences (including risks, complications, and costs) have been completely explained to them by that attorney; and that they fully understand the terms of this Agreement.

56. Counterparts; Facsimile/PDF Signatures. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. Execution of a facsimile or PDF copy shall have the same force and effect as execution of an original, and a copy of a signature will be equally admissible in any legal proceeding as if an original.

5/22/2020

Dated: May \_\_\_\_, 2020


**PLAINTIFF**

By:   
C7D8649D253442D  
CHRISTIE WINSTON

5/27/2020

Dated: May \_\_\_\_, 2020

**CLASS COUNSEL  
MAKAREM & ASSOCIATES, APLC**

By:   
C17C58ECA8674FC...  
Ron W. Makarem  
William A. Baird  
Attorneys for Plaintiff

Dated: May \_\_\_\_, 2020

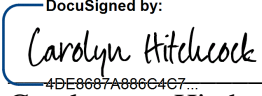
**DEFENDANT EXECAP, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_ for DEFENDANT EXECAP, INC.

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Dated: 5/27/2020

**DEFENDANT EXECUTIVE AUTOPILOTS,  
INC.**

By:   
Carolyn Hitchcock for DEFENDANT  
EXECUTIVE AUTOPILOTS, INC.

Dated: May \_\_\_\_, 2020

By: \_\_\_\_\_  
ANDREY KALCHENKO

1           55.    Advice of Attorney. Each Party warrants and represents that in executing this  
2 Agreement, they have relied on legal advice from the attorney of their choice; that the terms of  
3 this Agreement have been read and its consequences (including risks, complications, and costs)  
4 have been completely explained to them by that attorney; and that they fully understand the  
5 terms of this Agreement.

6           56.    Counterparts; Facsimile/PDF Signatures. This Agreement may be executed in  
7 any number of counterparts, each of which shall constitute an original and all of which together  
8 shall constitute one and the same instrument. Execution of a facsimile or PDF copy shall have  
9 the same force and effect as execution of an original, and a copy of a signature will be equally  
10 admissible in any legal proceeding as if an original.

11  
12 Dated: May \_\_\_\_, 2020

**PLAINTIFF**

13  
14 By: \_\_\_\_\_  
CHRISTIE WINSTON

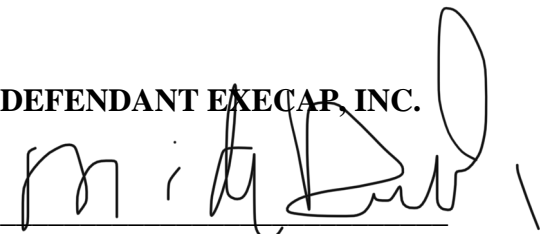
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17 Dated: May \_\_\_\_, 2020

**CLASS COUNSEL  
MAKAREM & ASSOCIATES, APLC**

18  
19 By: \_\_\_\_\_  
20 Ron W. Makarem  
21 William A. Baird  
Attorneys for Plaintiff

22  
23 Dated: May \_\_\_\_, 2020

**DEFENDANT EXECAP, INC.**

24  
25 By:   
\_\_\_\_\_ for DEFENDANT EXECAP, INC.

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Dated: May \_\_, 2020

**DEFENDANT EXECUTIVE AUTOPILOTS,  
INC.**

By: \_\_\_\_\_  
Carolyn Hitchcock for DEFENDANT  
EXECUTIVE AUTOPILOTS, INC.

Dated: May 25, 2020

By:   
ANDREY KALCHENKO