

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

TED BROUGHTON, on his own and on)
behalf of all similarly situated individuals,)
)
Plaintiff,)
vs.)
)
PAYROLL MADE EASY, INC. d/b/a)
CONTINUUM HR, a Florida corporation,)
)
Defendant.)
_____)

Civ. No. 2:20-cv-00041-SPC-NPM

AMENDED SETTLEMENT AGREEMENT

This matter has been resolved by compromise, and subject to Court approval of the terms and conditions of this Settlement Agreement (“**Settlement Agreement**”), is made and entered into, as of July 17, 2020, by and among Plaintiff Ted Broughton (the “**Named Plaintiff**”), on behalf of himself and the putative settlement class as defined below (the “**Settlement Class**” and, with the Named Plaintiff, the “**Plaintiffs**”), and Payroll Made Easy, Inc. d/b/a Continuum HR (“**Continuum HR**” or “**Defendant**”) related to claims in Broughton v. Payroll Made Easy, Inc. d/b/a Continuum HR, No. 2:20-cv-00041-SPC-NPM (M.D. Fla.) (the “**Action**”). Plaintiffs and Defendant are collectively referred to herein as the “**Parties.**” This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Action and the Released Claims (as defined below), upon and subject to the terms and conditions hereof (“**Settlement**”) as follows:

I. THE FAIR CREDIT REPORTING ACT CLAIMS

On January 17, 2020, Plaintiffs filed a Complaint in the United States District Court for the Middle District of Florida (ECF 1.) The Action alleges that Defendant violated

§§1681b(2)(a)(i) and (ii) of the Fair Credit Reporting Act, 15 U.S.C. 1681a-1681x (“FCRA”) in connection with procuring background reports for employment purposes. The Action is filed on behalf of the Named Plaintiff, individually, as well as on behalf of employees and job applicants residing in the United States for whom Continuum HR procured a consumer report for employment purposes using the same or substantially similar FCRA consent form as provided by Continuum HR to the Named Plaintiff and attached as Exhibit A to the Complaint. The Action alleged that Continuum HR is an employee leasing company and is a user of consumer reports within the meaning of the FCRA and provided FCRA consent forms that were used by a consumer reporting agency in procuring consumer reports about the Named Plaintiff and purported class members for employment purposes.

Plaintiffs allege that Defendant violated the FCRA as to the Named Plaintiff and purported class members because it allegedly provided Plaintiffs with a purported FCRA consent form that was not in compliance with certain FCRA strictures before procuring a consumer report from a consumer reporting agency on behalf of Plaintiffs’ employers. Defendant denies Plaintiffs’ allegations and denies that it committed any violation of the FCRA.

The Action seeks to recover statutory damages, punitive damages, and attorneys’ fees and costs. The Named Plaintiff and purported class members in the Action are represented by Marc Edelman of Morgan & Morgan P.C. (“**Class Counsel**”). Defendant is represented by Matthew Simpson and Christine Howard of Fisher Phillips LLP (“**Defense Counsel**”).

Following the filing of the Action, Defendant provided Plaintiff with information regarding the number of job applicants and employees for whom Defendant procured consumer reports using the same or substantially similar FCRA consent forms as provided by Continuum HR to the Named Plaintiff and attached as Exhibit A to the Complaint over both the two-year and five-year statute

of limitations period preceding the filing of the Complaint. The Parties also participated in a full-day mediation and numerous and frequent informal negotiations, which resulted in this Settlement.

II. DEFENDANT'S DENIAL OF ANY WRONGDOING AND LIABILITY

Defendant denies all charges of wrongdoing or liability arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action and believes it has a number of legal and factual defenses to the Released Claims asserted by the Named Plaintiff and the purported class members in this Action. Defendant believes that were it to proceed with this lawsuit, class certification would be denied and it would prevail on motion for summary judgment and/or at trial. Defendant, however, has agreed to settle this Action to avoid further fees and expenses and to bring closure to this litigation. This Settlement constitutes a compromise settlement of disputed claims and shall not be deemed or construed to be an admission or acknowledgement of liability on any allegations or claim asserted in this Action. Any stipulations or statements by Defendant contained in this Settlement Agreement are made for settlement purposes only.

III. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT

Plaintiffs believe that the claims asserted in the lawsuit have merit and that if the case did not settle, they would prevail at trial. However, Plaintiffs and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the case against Defendant through trial and through appeals. Plaintiffs and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, including proceedings involving class certification. Plaintiffs and Class Counsel believe that the settlement set forth in this Settlement Agreement confers substantial benefits on the Settlement Classes and is fair, reasonable, and adequate. and in the best interests of Plaintiffs and the Settlement Classes.

IV. TERMS OF THE AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their respective attorneys, that, subject to the approval of the Court, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice upon and subject to the terms and conditions of the Settlement as follows:

1. Definitions

1.1. “**Action**” means the case styled Broughton v. Payroll Made Easy, Inc. d/b/a Continuum HR, currently pending in United States District Court for the Middle District of Florida. Case No. 2:20-cv-00041-SPC-NPM (M.D. Fla.).

1.2. “**CAFA Notices**” means notice to the appropriate federal and state officials in accordance with the Class Action Fairness Act (CAFA). The Settlement Administrator shall be responsible for any and all other CAFA notices or obligations required by law with respect to this Agreement.

1.3. “**Claim Form**” means the document in the form attached as Exhibit “A” that will be mailed to class members’ last known addresses and must be signed and returned, or properly submitted online, by the Response Deadline for the class member to receive his or her share of the Settlement Fund.

1.4. “**Class Counsel**” means Marc Edelman of Morgan & Morgan, P.C.

1.5. “**Class Member**” or “**Settlement Class Member**” means any individual who is not validly excluded from the Settlement Class in compliance with all terms and conditions of this Settlement Agreement.

1.6. “**Class Period**” means January 17, 2015 through the date of the Preliminary

Approval Order.

1.7. “Court” means the United States District Court for the Middle District of Florida, Ft. Myers Division.

1.8. “Defendant” means Defendant Payroll Made Easy, Inc. d/b/a Continuum HR and its current and former parents, subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and/or assigns, and each of their respective present, former, or future officers, directors, shareholders, agents, control persons, advisors, employees, representatives, consultants, insurers and reinsurers, accountants, attorneys, and any representative of the above.

1.9. “Defense Counsel” means Matthew Simpson and Christine Howard of Fisher & Phillips LLP.

1.10. “Effective Date” means the date on which the Judgment approving this Settlement becomes Final.

1.11. “FCRA” means the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a-x.

1.12. “Final” means the expiration date of the time for filing or noticing any appeal of or petition for review relating to the Judgment entered in this Action, provided there are no objectors to the settlement or appeals in the action made or noted during that period in accordance with Federal Rules of Appellate Procedure 3 and 4. If a Class Member objects to or appeals the Settlement, “Final” means the date on which all appellate rights with respect to the Judgment have expired or have been exhausted in such a manner as to affirm the Judgment, including review by the United States Supreme Court.

1.13. “Final Approval Hearing” means the hearing scheduled to consider final approval

of the Settlement and award to the Class Representative and Class Counsel.

1.14. “Final Approval Order” or “Judgment” means a judgment and order of dismissal with prejudice entered by the Court in the Action granting final approval of the Settlement and entering a judgment according to the terms set forth in this Settlement.

1.15. “Named Plaintiff” or “Class Representative” means Ted Broughton.

1.16. “Notice” means the form of notice to be provided to the Settlement Classes after preliminary approval of this Settlement by the Court, as further described in Section 4.

1.17. “Opt-Out” means to timely request exclusion from the Settlement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and the procedure set forth in Section 4.8.

1.18. “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.19. “Preliminary Approval Order” means the order proposed and submitted by the Parties as set forth in Section 4.10.

1.20. “Released Claims” means all class action and individual claims that were or could have been brought under 15 U.S.C. §§ 1681a-x (including against Defendant’s insurers) and all claims that could have been brought under state law. Plaintiffs and all Class Members, on behalf of themselves and their spouses, agents, representatives, assigns, heirs, executors, administrators, beneficiaries, and trustees, release their right to bring a class action or individual action as well as actual damages of any kind, statutory fines or damages, and punitive damages and any other remedy based upon such Released Claims. With respect to the Released Claims only, the Class

Representative and Settlement Class Members expressly waive all rights provided by California Civil Code Section 1542, or other similar statutes, that they may have against each of the Released Parties. California Civil Code Section 1542 states: A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

1.21. “Released Claims by Named Plaintiff” means the release, by Plaintiff Ted Broughton of all claims under any applicable law, whether known or unknown, and whether they be statutory, common law, or based in law or equity, pursuant to the Supplemental Settlement Agreement.

1.22. “Released Parties” means Defendant and its current and former parents, subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees, and/or assigns and their respective subsidiaries, affiliates, divisions, associates, agents, successors, assignors, assignees and/or assigns, and each of their respective present, former or future officers, directors, shareholders, agents, control persons, advisors, employees, representatives, consultants, insurers and reinsurers, accountants, attorneys, and any representative of the above. “Released Parties” also includes Defendant’s clients and Plaintiffs’ employers, including but not limited to the following: All Florida Insulation, Blue Rock Partners LLC, Bobcat Petro Bonita Boat Harbor, Colliers Reserve Association, Companion Home Care, Conserva Irrigation, Courtesy Valet Corporation, Creekside- VCC Master Association, Inc., Diamond Air Design LLC, Discount Ramps, Gulfside Elevator & Cab Interiors, HD Ramps, Heritage Bay, Heritage Palms, Jallo Oil Distributors, Inc., JL Business Interiors, John and Jack Enterprises, Inc., Maid Pro, Mount Dora Gas, Inc., My Practice 24, Nobles Plant Construction and Underground, NTC Harbor, Inc.,

Palmetto Pine Country Club, Premier Workforce Solutions, Prox Malt, Radiant Asset Mgt. Inc., Renova, Rivers Edge Mart, Inc., Royal Maid Service – PSML, LLC, St. Clare Terrace, Tinnells Finer Foods, Venetian River Club, Venice Quick Mart, Inc., and Vision Golf Management. Blue Magma Residential is not a Released Party.¹

1.23. “Response Deadlines” means members of the Settlement Class shall have thirty (30) days after the date the Settlement Administrator mails the Notice to Settlement Class Members, by which Response Deadline the members of the Settlement Class must postmark written notice of their intent to opt-out of the settlement and/or a written notice of objection to the preliminarily approved settlement, as applicable. Members of the Settlement Class shall have sixty (60) days to postmark a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement in order to receive a *pro rata* share of the Settlement Claim Fund.

1.24. “Settlement Administrator” means the settlement administrator American Legal Claims Services, who shall be responsible for mailing of notices (including class notices and CAFA Notices), forwarding of return notices, processing of claim forms, and mailing of the individual checks to Class Members who submit valid Claim Forms.

1.25. “Service Award.” Plaintiff is not seeking a service award for his work and effort on behalf of the class.

¹ Mr. Broughton stipulates that he, on behalf of himself and others similarly situated, entered into a separate release and settlement agreement with Blue Magma Residential as a result of the case titled *Broughton v. Blue Magma Residential, LLC*, which was filed on or about November 25, 2019, in the United States District Court for the Middle District of Florida, Case No. 8:19-cv-02906-VMC-AAS, in which it was alleged Blue Magma Residential obtained Plaintiff’s consumer report without proper authorization and without making the required certifications to the consumer reporting agency prior to procuring his report. It is understood and agreed that Defendant has entered into this Agreement in reliance on Mr. Broughton’s representation that he is separately releasing any and all class claims arising under the FCRA against Blue Magma Residential.

1.26. “Settlement” means the terms and conditions of settlement as described in this Settlement Agreement.

1.27. “Settlement Claim Fund” means the amount of One Hundred Twenty One Thousand Seven Hundred Forty Dollars (\$121,740.00) of the Settlement Fund that will be distributed to the Settlement Class Members who timely submit a proper Claim Form on an individualized *pro rata* basis as further defined and calculated pursuant to sections 2.5.2. and 2.5.3. Any unclaimed portion of the Settlement Claim Fund shall revert to Defendant.

1.28. “Settlement Fund” means the gross sum of Two Hundred Twenty Thousand Dollars (\$220,000.00). The Settlement Fund includes the Settlement Claim Fund, the general release consideration pursuant to the Supplemental Settlement Agreement, Class Counsel attorney fees and costs, and notice and settlement administration costs.

1.29. “Settlement Payment” means the individualized *pro rata* share of the Settlement Claim Fund, as calculated pursuant to sections 2.5.2. and 2.5.3. below, that will be distributed from the Settlement Claim Fund to Settlement Class Members who timely submit a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement and do not timely and validly opt out of the settlement.

1.29. “Settlement Hearing” means the hearing described in Section 5.

1.30. “Settling Parties” means Named Plaintiff and Defendant as described in sections 1.7 and 1.14.

1.31. “Terminating Events” shall have the meaning set forth in Section 8 below.

1.32. “Termination Notice” shall have the meaning set forth in Section 8 below.

2. The Settlement

2.1. For the purposes of effectuating the Settlement only, Class Members and Defendant

agree jointly to request that the Court certify the Settlement Classes as set forth herein.

2.2. The “**Settlement Class**” consists of: All natural persons residing in the United States (including all territories and other political subdivisions of the United States) for whom Continuum HR procured a consumer report for employment purposes using the same or substantially similar FCRA consent form as provided by Continuum HR to the Named Plaintiff and attached as Exhibit A to the Complaint between January 17, 2015, and the date of Preliminary Approval.

Excluded from the class definition are any employees, officers, or directors of the Defendant, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

The Parties believe that the Settlement Class consists of approximately 1,140 individual members, with approximately 602 individuals in the one to two-year statute of limitations period preceding the date the Named Plaintiff filed the Complaint (“**Two Year Class**”) and approximately 538 individuals in the three to five-year statute of limitations period preceding the date the Named Plaintiff filed the Complaint (“**Three Year Class**”). This is a material term of this Settlement. In the event that the class size exceeds 1,140 by more than 5%, Plaintiffs will have the right to withdraw from this Settlement unless Continuum HR increases the Settlement Fund referenced below proportionately to account for the larger class size. The Two Year Class and Three Year Class member receive notices tailored to their specific class providing the approximate amount each claimant shall receive.

2.3. On the Effective Date, the Settlement Classes set forth in section 2.2 above shall become permanently certified unless the Judgment does not become Final.

2.4. In the event the Settlement is not preliminarily and finally approved and

implemented, or the Judgment does not become Final, the Settlement Classes are dissolved without prejudice or inference regarding the appropriateness of class certification and thereafter the issue of class certification will be decided *de novo*, and Defendant is not precluded from challenging class certification.

2.5. Defendant agrees to a gross settlement of Two Hundred Twenty Thousand Dollars (\$220,000.00) to resolve the claims set forth by the Settlement Class, constituting the Settlement Fund.

2.5.1. The Settlement Fund shall be disbursed as follows: (a) Settlement Claim Fund of One Hundred Twenty One Thousand Seven Hundred Forty Dollars (\$121,740.00) of the Settlement Fund, distributed to the Settlement Class Members on an individualized *pro rata* basis as further defined and calculated pursuant to sections 2.5.2. and 2.5.3. below, with any unclaimed amounts reverting back to Defendant, (b) Class Counsel fees and costs of Seventy Three Thousand Two Hundred Sixty Dollars (\$73,260.00) of the Settlement Fund, subject to Court approval; (c) Payment to the Named Plaintiff in the amount of Five Thousand Dollars (\$5,000.00) as consideration for executing a general release of claims and for not seeking-rehire; (d) notice and settlement administration costs of up to Twenty Thousand (\$20,000.00) to be paid out of the Settlement Fund, with any unused portion reverting back to Defendant. Plaintiff will pay for mediation costs and seek reimbursement from the Settlement Fund.

2.5.2. The Settlement Payments will be calculated and made available to the Class Members *pro rata* as follows:²

- Ninety-Seven Thousand Three Hundred Ninety-Two Dollars (\$97,392.00) of

² Pro Rata share is determined by having a numerator of 1, and a denominator equal to the number of class members. For example, if there are 602 class members, a pro rata share equals 1/602.

the Settlement Claim Fund distributed to those members of the Two-Year Class of 602 individuals who submit timely and valid Claim Forms on a *pro-rata* basis (i.e. \$161.78 per individual) based on the total number of Two-Year Class Members, with any unclaimed funds from the Settlement Claim Fund reverting back to Defendant, and

- Twenty-Four Thousand Three Hundred Forty-Eight Dollars (\$24,348.00) of the Settlement Claim Fund distributed to those members of the Three-Year Class of 538 individuals who submit timely and valid Claim Forms on a *pro-rata* basis (i.e. \$45.25 per individual), with any unclaimed funds from the Settlement Claim Fund reverting back to Defendant,

2.5.3. The Settlement Payment will be distributed to each Class Member who timely submits a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement.

2.5.4. Any unclaimed funds of the Settlement Claim Fund and any uncashed Settlement Payments after the expiration of the 90-day period for negotiating checks used to distribute the Settlement Claim Fund shall automatically revert back to Defendant.

2.6. In exchange for the releases and waivers of claims described below, Defendant will pay the amount of the Settlement Fund in settlement of all claims asserted against it in this Action from which Settlement Fund the Settlement Class Members will be paid and the Court-approved Class Counsel Attorney's fees and costs, Named Plaintiff's general release consideration, and class settlement administration costs will be paid. Defendant shall deposit 100% of the full Settlement Fund with the Settlement Administrator within ten (10) days after the date of the Final Approval Order. The Settlement Fund will be distributed to the Settlement Class Members *pro rata* based

as determined pursuant to section 2.5.2, using the timeline set forth below.

(a) Initial payments to Settlement Class Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail, postmarked within ten (10) business days of the Effective Date. All initial checks will expire ninety (90) days after they are issued and will state the expiration date on their faces. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed or not negotiated before it expires, neither Defendant nor the Settlement Administrator nor Class Counsel shall have any further obligations to Plaintiff or any Settlement Class Member, except that:

(i) For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will re-mail the check to the forwarding address;

(ii) If a Settlement Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check before the initial check is negotiated, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check.

(b) The Parties agree that all Settlement Class Members waive and abandon any ownership interest in any such unclaimed, undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.

(c) After the initial 90-day period for negotiating checks (which total uncashed first check remainder will be calculated by the Settlement Administrator no later than 30 days following the 90-day check expiration date), any unclaimed funds from the Settlement Claim Fund and any uncashed settlement compensation shall automatically revert back to Defendant.

2.7. All taxes on the income of the Settlement Fund and tax-related expenses incurred in connection with the taxation of the Settlement Fund, if any, shall be paid out of the Settlement Fund.

2.8. Members of the Settlement Class shall be solely responsible for the taxes, interest, and penalties due and owing, if any, should the payment of Settlement Funds, or any portion thereof, be determined to be taxable.

3. Release

On the Settlement Effective Date, all members of the Settlement Class who have not timely and properly opted out of the settlement, and all those acting or purporting to act on their behalf including, but not limited to, their successors, assigns, legatees, heirs, and personal representatives, fully and forever release, waive, acquit, and discharge Defendant and the Released Parties to the fullest extent permitted by law from any and all Released Claims. Members of the Settlement Class are not releasing Blue Magma Residential from any FCRA-related claims as part of this Agreement.³

4. Notice, Opt Out, and Settlement Approval

4.1. Not later than seven (7) calendar days after the Court has issued the Preliminary Approval Order, Defendant shall disclose the names and last known addresses of members of the Settlement Class to the Settlement Administrator. Class Counsel will have three (3) business days to note any objections to the content or format of the Class List, which will otherwise be deemed as acceptable and approved for use by the Settlement Administrator.

³ Mr. Broughton stipulates that he, on behalf of himself and others similarly situated, has entered into a separate release and settlement agreement with Blue Magma Residential as a result of the case titled *Broughton v. Blue Magma Residential, LLC*.

No later than seven (7) calendar days after receipt of such information, the Settlement Administrator will mail the tailored Notice to the Two and Three Year Classes (attached as Exhibit “1”) via first-class U.S. Mail, postage prepaid and return service requested to such Settlement Class Member’s last known mailing address, as updated by using the U.S. Postal Service’s database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear the Settlement Administrator’s mailing address as the return-mail address. The Notice will include an indication it is a “Court Approved Settlement Notice authorized by the U.S. District Court for the Middle District of Florida” and may also include a bar code.

A Claim Form (Exhibit “2”) will also be included as part of the mailing.

No later than seven (7) calendar days after the Court has issued the Preliminary Approval Order, the Settlement Administrator shall post a website containing information about the Settlement, including all relevant dates and pleadings.

4.2. For all Notices returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update those Settlement Class Members’ addresses and will cause the Notice to be re-mailed by the Settlement Administrator to such Settlement Class Members who can be located.

4.3. The Settlement Administrator will establish and staff a toll-free telephone line that members of the Settlement Class can use to contact the Settlement Administrator with questions about the settlement or to change their addresses.

4.4. To receive a portion of the Settlement Claim Fund, all members of the Settlement Class must submit a timely Claim Form by the Response Deadline. Claim forms may be submitted through a claims filing portal on the settlement website, by fax, or by mail. The date of the

postmark on the return mailing envelope or the timestamp on the fax or claims filing portal will be the exclusive means to determine whether a Claim Form has been timely submitted. However, it is not the intention of the Parties to exclude Class Members from participating in the Settlement for technical reasons that do not interfere with the orderly administration of the Settlement. Therefore, the Settlement Administrator will compile a list of claims rejected for failure to cure an unsigned Claim Form.

If the Settlement Class Member's Claim Form or Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter ("**Cure Letter**") within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Claim Form or Request for Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, to postmark, fax, or electronically submit a revised Claim Form or Request for Exclusion. If a Class Member responds to a Cure Letter by filing a defective claim, then the Claims Administrator will have no further obligation to give notice of a need to cure. If the revised Claim Form is not postmarked, received by fax, or electronically submitted within the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, it will be deemed untimely.

4.8. All members of the Settlement Class will have the right to be excluded from, i.e., to "opt out" of, the Settlement Class. On or before the Response Deadline, each member of the Settlement Class who elects to opt out of the settlement must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating his or her name and address and stating that he or she desires to opt-out of the settlement or otherwise does not want to participate in the

settlement. Any member of the Settlement Class who does not timely (as measured by the postmark on that individual's written notice) opt out of the settlement by written notice directed to the Settlement Administrator and containing the requisite information shall remain a member of the Settlement Class and shall be bound by any Orders of the Court about the Settlement or the Settlement Class. Any member of the Settlement Class who fails to timely and validly opt out of the Settlement shall be bound by the terms of this Settlement.

4.9. Any member of the Settlement Class who wishes to object to the settlement must return to the Settlement Administrator a timely written statement of objection no later than thirty (30) days after the date the Settlement Administrator mails the Notice of Settlement. The Notice of Objection must state (1) the case name and number; (2) the name, address, telephone number, and email address (if any) of the member of the Settlement Class making the objection; (3) a statement of the objection(s) being asserted; (4) a detailed description of the facts and any legal authorities underlying each objection; (5) a notice of intent to appear at the Final Approval Hearing, if the Settlement Class Member making the objection intends to appear; (6) a list of any witnesses the Settlement Class Member making the objection may call to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (7) a list of any exhibits, and copies of the same, which that objector may offer at the Final Approval Hearing. Any objection must be personally signed by the objector.

No member of the Settlement Class shall be entitled to contest in any way the approval of the terms and conditions of this Agreement or the Court's Final Approval Order except by filing and serving written objections in accordance with the provisions of this Settlement Agreement and Release. Any member of the Settlement Class who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any

objections, whether by appeal or otherwise, to the settlement.

The Settlement Administrator shall provide any objections and backup information to Defendant's Counsel and Class Counsel, who shall file same with the Court at least seven (7) days before the Final Approval Hearing or as otherwise ordered by the Court.

4.10. As soon as practicable after the Parties execute this Agreement, Class Counsel will present this Agreement to the Court for preliminary settlement approval and will request by unopposed motion that the Court enter a Preliminary Approval Order.

4.11. The Parties agree to cooperate to work to schedule a Final Approval Hearing as soon as practicable.

5. Final Approval Hearing Judgment and Notice

5.1. The Final Approval Hearing, as established in the Notice Order, shall be for the purpose of consideration of Final approval of the Settlement set forth in this Settlement Agreement.

5.2. No later than ten (10) calendar days before the Final Approval Hearing, the Settlement Administrator will certify to the Court that it has fully complied with the notice provisions set forth in Section 4 herein.

6. Administration and Supervision of the Settlement Fund

6.1. A Settlement Administrator will be a neutral third party mutually agreeable to the parties, approved by and responsible to the Court. and shall directly administer the Notice of the Settlement, the claims process and shall control the Settlement Fund, subject to Court approval. The Settlement Administrator shall administer and oversee the mailing of the Court-approved Notices and distribution of funds from the Settlement Fund with mutual approval of both Defendant and Class Counsel. All funds shall be maintained in a bank escrow account unless the Parties jointly agree otherwise. Costs of settlement administration due to Defendant under

Paragraph 2.5.4 shall be paid from the Settlement Fund after the distribution to Class Members and other payments contemplated in Paragraph 2.5.1, and any unused costs shall revert to Defendant. On completion of the administration of the Settlement, the Settlement Administrator shall provide or cause to be provided to the Court a final report on its administration of the Settlement. The Settlement Administrator shall have and shall provide to Class Counsel and Defense Counsel reasonable access to documents relating to compliance and administration of the Settlement, with the right, but not the obligation, to review and audit the documents to determine full compliance with the terms of the Settlement. The Settlement Administrator shall hold all documents and information received regarding Class Members and Potential Class Members in confidence, and not use such information for any purpose apart from administering the settlement.

6.2. No person shall have any claim against the Settlement Administrator, Class Counsel, Defense Counsel and/or Defendant based on the monetary payments made substantially in accordance with this Settlement Agreement, or further order(s) of the Court or stipulations of the Parties on the record.

7. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses

7.1. Class Counsel shall make an application to the Court for an award from the Settlement Fund for attorneys' fees, costs, and other expenses in an amount not to exceed \$73,260.00 of the Settlement Fund. Defendant shall not oppose or object to this application provided that the request for an award of fees and costs is consistent with this Settlement. The Court's award of fees and costs shall be payable from the Settlement Fund within ten (10) business days after the Effective Date.

The Named Plaintiff shall notify the Court he is receiving consideration for execution a general release pursuant to the Supplemental Settlement Agreement in the amount of \$5,000.00

(the “**Service Award**”), which shall be in addition to any other sum he may receive as a Class Member.. If approved, the general release consideration shall be payable from the Settlement Fund within ten (10) business days after the Effective Date.

8. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

8.1. Plaintiffs or Defendant, at any of their sole discretion, shall each have the right to terminate the Settlement and this Settlement Agreement, including dissolution of the Settlement Class, if any of the following conditions subsequently occurs (“**Terminating Events**”):

(a) the Court's refusal to preliminarily or permanently approve this Settlement or any material part of it;

(b) the Court requires a notice program in addition to or substantially different from that set forth herein;

(c) the Court orders Defendant to pay attorneys' fees and costs with respect to the litigation greater than as provided herein;

;

(e) the Court orders Defendant to pay, with respect to the litigation, any amount above the \$220,000.00 required to establish the Settlement Fund, as provided herein;

(f) the Court declines to enter the Judgment in any material respect;

(g) the Potential Members of the Settlement Class exceeds, by more than 5%, the class size numbers stated in Paragraph 2.2 of this Settlement Agreement, unless Defendant agrees to increase the Settlement Fund in an amount proportional to the excess number; or

(h) the Judgment is reversed, vacated, or modified in any material respect by the Eleventh Circuit Court of Appeals, the United States Supreme Court, or adverse action being taken by any other trial court or appellate court in any jurisdiction.

8.2. The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, incentive awards, costs and other expenses shall not be grounds for Named Plaintiff, the Settlement Classes, or Class Counsel to terminate this Settlement.

8.3. If any Party exercises its respective rights to terminate this Settlement pursuant to Paragraph 8.1 herein, the Party shall terminate the Settlement, including dissolving the Settlement Classes, by delivering written notice of the election to terminate (“**Termination Notice**”) to all other parties and their counsel hereto within thirty (30) days of the Terminating Event. In the event that a Termination Notice is so provided, then the Settlement shall be canceled and terminated unless and until Class Counsel and Defense Counsel mutually agree in writing to proceed with the Settlement.

8.4. In the event that the Settlement is terminated as provided for herein, then (a) this Settlement shall be null and void and of no further force and effect, including voiding the Settlement Classes; (b) the Settling Parties shall be restored to their respective positions in the Action immediately prior to the execution of this Settlement Agreement; (c) any portion of the Settlement Fund not used to fund notice and administration shall be returned to Defendant; (d) this Settlement shall not be used in the Action or in any other proceeding for any purpose; and; (e) any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

8.5. Upon the filing of the proposed Settlement with the Court, all proceedings shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the proposed Settlement or to comply with or effectuate the terms of this Settlement Agreement.

9. Final Judgment

The Parties shall jointly seek entry by the Court of a Final Judgment that includes provisions:

- (a) granting final approval of this Settlement, and directing its implementation pursuant to its terms and provisions;
- (b) ruling on Class Counsel's application for attorneys' fees, costs and other expenses, and approval of payment to Plaintiff of \$5,000.00 for executing a general release and agreeing not to seek rehire as detailed in the Supplemental Settlement Agreement;
- (c) discharging and releasing Defendant and Released Parties from the Released Claims as provided in Section 3 above;
- (d) directing that the Action be dismissed with prejudice; and
- (e) reserving to the Court continuing and exclusive jurisdiction over the parties with respect to the Settlement and the Final Judgment.

10. Miscellaneous Provisions

10.1. The Parties (a) acknowledge that it is their intent to consummate this agreement, (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement; and (c) agree to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement.

10.2. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.3. This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile. Each counterpart, when so executed, shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

10.4. Before entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties with notice to be given to the Court of the agreed modification or amendment, or by stipulations made on the record. Following entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties and approved by the Court.

10.5. The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any of the Parties of any breach of this Settlement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement.

10.6. This Settlement binds and inures to the benefit of the Parties, their assigns, affiliates, heirs, administrators, executors, and successors.

10.7. Except as otherwise expressly stated herein, the Settlement is not intended to confer any benefits upon any non-party.

10.8. This Settlement Agreement constitutes the entire agreement among the Parties pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. In entering into this Settlement, the Parties have not relied upon any representation or promise made by the other Party not contained in this document.

10.9. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

10.10. The signatories hereto represent that they are fully authorized to enter into this

Agreement and are fully authorized to bind the Parties to all terms stated herein. It is agreed that Class Members are so numerous that it is impossible or impractical to have each Class Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of Class Members by Class Representative and Class Counsel, subject to Court approval.

10.11. The Parties understand and agree that this Agreement and all exhibits thereto shall be inadmissible for any purpose in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this Agreement or to show that the Agreement bars subsequent claims that are released by the Agreement. The Parties agree that, to the extent permitted by law, this Agreement will operate as a full and complete defense to, and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement.

10.12. The headings in this document are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

10.13. Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

10.14. For the Class:

Marc Edelman
MORGAN & MORGAN, P.C.
201 N. Franklin St., 7th Floor
Tampa, FL 33602
medelman@forthepeople.com

10.15. For Defendant:

Matthew R. Simpson
FISHER & PHILLIPS LLP
1075 Peachtree Street, NE, Suite 3500

Atlanta, GA 30309
msimpson@fisherphillips.com

10.16. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval. The Court, having reviewed this Settlement Agreement, approves the same and Orders the Parties to proceed as agreed.

AGREED:

TED BROUGHTON, Plaintiff

By: Jed Broughton

Marc Edelman
MORGAN & MORGAN, P.C.
201 N. Franklin St., 7th Floor
Tampa, FL 33602
Telephone: (813) 577-4722
Facsimile: (813) 257-0572
medelman@forthepeople.com

Counsel for Plaintiffs

PAYROLL MADE EASY, INC. d/b/a CONTINUUM HR, Defendant

By: _____

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101 E. Kennedy Blvd., Suite 2350

Tampa, FL 33602
Telephone: (813) 769-7500
Facsimile: (813) 769-7501
choward@fisherphillips.com

Counsel for Defendant

This __ day of July, 2020.

enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval.

The Court, having reviewed this Settlement Agreement. approves the same and Orders the Parties to proceed as agreed.

AGREED:

TED BROUGHTON, Plaintiff

By: Jed Broughton

Marc Edelman
MORGAN & MORGAN, P.C.
201 N. Franklin St., 7th Floor
Tampa, FL 33602
Telephone: (813) 577-4722
Facsimile: (813) 257-0572
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Counsel for Plaintiffs

PAYROLL MADE EASY, INC. d/b/a CONTINUUM HR, Defendant

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