

# EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

LEAH ISBELL <i>individually and on behalf of</i>	)	
<i>all others similarly situated,</i>	)	
	)	
Plaintiff,	)	No. 0:22-cv-01322-WMW-DJF
	)	
v.	)	
	)	
POLARIS, INC.	)	
	)	
Defendant.	)	
	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made this 22nd day of June 2023, by and between Plaintiff Leah Isbell (“Isbell”), on behalf of herself and on behalf all persons employed by Polaris, Inc., in its Huntsville, AL facility, from October 4, 2019, to the present and who were paid on an hourly basis and Polaris, Inc. and any of its parent organizations, holding companies, predecessors, affiliates, subsidiaries, divisions, business units, joint venturers, and related companies and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, contractors, agents, representatives, attorneys, insurers, partners, investors, shareholders, and administrators, and any other related persons or entities (collectively, “Polaris”);

WHEREAS, on May 17, 2022, Isbell commenced litigation in the U.S. District Court for the District of Minnesota (the “Court”) captioned *Isbell v. Polaris, Inc.*, No. 0:22-cv-01322 (the “Lawsuit”), and filed an Amended Complaint on July 1, 2022, in which she asserted claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) on behalf of herself and an FLSA collective arising out of Polaris’ alleged failure to appropriately compensate members of the collective for all hours worked per workweek due to i) Polaris’ timekeeping and rounding practices throughout the statutory period, and ii) the approximately two-month outage of the Kronos timekeeping system used by Polaris beginning in December 2021; and

WHEREAS, Plaintiff and Polaris (the “Parties”) determined to attempt to resolve the case early and retained mediator Lynn P. Cohn, to assist in that effort; and,

WHEREAS, after the production of data and other information from Polaris, and upon analysis by Plaintiff, the Parties participated in a full-day mediation session facilitated by Ms. Cohn on March 31, 2023, which successfully laid the groundwork for an agreement between the Parties, and,

WHEREAS, following additional discussions between the Parties facilitated by Ms.

Cohn in the days following the March 31, 2023 mediation session, the Parties were able to reach the agreement which is reflected in in this Agreement; and

WHEREAS, Plaintiffs represent that they have conducted a thorough investigation into the facts relating to the claims asserted in the Amended Complaint and are of the opinion and belief that the settlement described herein is fair, reasonable, adequate and in the best interests of all in light of all known facts and circumstances, including the considerable expense of discovery and litigation, defenses that could be asserted by Polaris, uncertainty of the result through continued litigation and appeal, and the risks of delay and an adverse judgment; and

WHEREAS, Polaris denies all of the allegations made by Isbell in the Lawsuit and further denies that it is liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Lawsuit; and

WHEREAS, in order to avoid the expense and burdens of further litigation, the Parties desire to resolve any and all suits, actions, causes of action, claims, or demands based on putative violations of the FLSA relating to or arising out of i) Polaris' rounding and timekeeping practices at its Huntsville, AL facility and ii) the outage of the Kronos timekeeping system at Polaris' Huntsville, AL facility, including, without limitation, all state, local, and federal claims for unpaid wages (whether minimum wage or overtime), failure to timely pay wages, failure to record hours worked, paystub requirements, reimbursement, and all related claims for statutory damages or penalties, interest, liquidated damages, attorneys' fees, costs, expenses, and all other such amounts, and including, without limitation, all claims that have been asserted in the Amended Complaint or that could have been asserted in Amended Complaint;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the Parties agree as follows:

**1. No Admission of Liability or Concession as to the Merits**

Polaris expressly denies any wrongdoing or any violation of state or federal law as alleged in the Amended Complaint. Nothing contained in this Agreement shall be construed as an admission of any liability or concession as to the merits of any claim by any Party, and all Parties agree not to offer this Agreement as evidence or otherwise use it in any judicial or administrative proceeding, except that this Agreement may be introduced in any proceeding for the sole purpose of enforcing its terms.

**2. Approval of Settlement**

(a) All terms of this Agreement are contingent upon the approval of the Parties' settlement and certification by the Court of the FLSA Collective for settlement purposes only.

(b) Final Approval

(i) For purposes of this Agreement, "Final Approval" shall be deemed to occur upon the issuance of a Court order (the "Final Approval Order") that (1) approves the settlement; (2) conditionally certifies the proposed



FLSA Collective pursuant to Section 216(b) for settlement purposes only; (3) approves, and directs distribution of, the proposed Notice, Claim Form, and Release to the Putative FLSA collective members; and (4) dismisses the action and enters final judgment.

- (ii) If the Court grants Final Approval, then the “Effective Date” of the settlement shall be the latest of: (i) the date of final affirmance on any appeal of the Court’s Final Approval Order; (ii) the date of final dismissal, with prejudice, of the last pending appeal from the Court’s Final Approval Order; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Court’s Final Approval Order.
- (iii) The Parties’ proposed Final Approval Order is attached as Exhibit B hereto.

(c) The Parties agree to cooperate and take all steps necessary and appropriate to obtain a Final Approval Order, and otherwise effectuate all aspects of this Agreement.

### **3. Stipulation to Certification of the FLSA Collective and Settlement Classes**

(a) The Parties hereby stipulate for settlement purposes only to the certification of the FLSA Collective.

(b) In so stipulating, Polaris does not waive, and instead expressly reserves, its right to challenge the propriety of certification of the FLSA collective in the event the settlement described in this Agreement is not approved by the Court or the Effective Date does not occur. The Parties further agree that, other than to effectuate the Settlement of this Action in this jurisdiction, the certification of the FLSA Collective for settlement purposes and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, shall not be admissible in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour litigation against any Polaris.

(c) The Settlement FLSA Collective is defined as follows:

All individuals employed by Polaris, Inc. (“Polaris”), in its Huntsville, AL facility, from October 4, 2019, to the present and who were paid on an hourly basis and who are identified in the data produced by Polaris to Isbell for purposes of facilitating settlement discussions.

(d) This Settlement is contingent upon certification of the FLSA Collective. If the FLSA Collective is not certified, then this Settlement Agreement may be voided at either Party’s option.

### **4. Settlement Payment**

(a) Within fourteen (14) days after the Effective Date, Polaris shall cause the total of \$1,390,000.00 (the “Settlement Payment Amount”) to be wired into an interest-bearing escrow account designated by Plaintiff to be under the control of the Settlement Administrator and designated as a Qualified Settlement Fund pursuant to the Internal Revenue Code (the “Escrow Account”). This Settlement Payment represents a negotiated amount for the backwages and liquidated damages available under the FLSA and the backwages and liquidated damages and penalties available under all applicable State laws, for payment of the Service Payment to Isbell, and for payment of all legal fees, expenses and service payments sought by Plaintiffs’ counsel.

(b) The Settlement Payment Amount will be the sole source and maximum payment by Polaris and shall include: (1) all settlement payments to the Settlement FLSA Collective members who participate in the settlement; (2) any Service Payment approved for Isbell; (3) any of Plaintiffs’ Counsel’s reasonable fees, costs and expenses approved by the Court; and (4) the reasonable fees and expenses of the Settlement Administrator. With the exception of Polaris’ share of payroll taxes associated with the settlement payments paid to the Participating Settlement FLSA Collective members, which Polaris shall pay in addition to the Settlement Payment Amount, the Polaris shall not pay or be required to pay any amount in connection with this settlement above and beyond the Settlement Payment Amount.

(c) The Settlement Payment Amount, less any amounts awarded by the Court for Plaintiffs’ Counsel’s attorneys’ fees and costs and for the Service Payment to Isbell, and less the payment set forth in Section 8 to the Settlement Administrator, shall be referred to as the “Net Settlement Fund.”

(d) The settlement payments to participating Settlement FLSA Collective members and the Service Payment to Isbell will not create any credit or otherwise affect the calculation of benefits provided under any benefit or compensation plan or program provided by Polaris (such as 401(k), pension, bonus, severance, or deferred compensation plans), and no payment made pursuant to this Agreement will be compensation for purposes of such plans/programs, require any contribution or award under such plans/programs, or otherwise require or modify coverage, contributions, or benefits under such plans/programs, and Isbell and the participating Settlement FLSA Collective Members will be deemed to have waived all such benefit or compensation plan or program claims, whether known or unknown by them, as part of their releases of claims under this Agreement.

## **5. Attorneys’ Fees and Costs**

(a) Plaintiffs’ Counsel may petition the Court for an award of attorneys’ fees and costs in conjunction with the Parties’ settlement.

(b) Any attorneys’ fees and costs awarded to Plaintiffs’ Counsel in conjunction with the Parties’ settlement shall be paid from the Settlement Payment Amount and shall reduce the settlement funds available to pay the members of the FLSA Collective. Polaris will not oppose any request by Plaintiffs’ Counsel for an award of attorneys’ fees and costs that, in total, does not exceed one-third (33%) of the Settlement Payment Amount.

(c) The Settlement is not conditioned upon the Court’s approval of Plaintiffs’



Counsels' application for attorneys' fees and expenses. To the extent that such application for attorneys' fees and expenses is not approved by the Court, in whole or in part, the amounts of the application not approved by the Court shall be allocated for the benefit of the members of the Settlement FLSA Collective.

(d) The amount awarded by the Court for Plaintiffs' Counsel's attorneys' fees and expenses may be paid to Plaintiffs' Counsel from the Escrow Account five (5) business days following the Settlement Administrator's receipt of the Settlement Payment Amount from Polaris.

#### **6. Service Payment to Named Plaintiff**

(a) Plaintiffs' Counsel may also petition for an award of a Service Payment to plaintiff Isbell.

(b) Any service payment awarded shall be paid from the Settlement Payment Amount and shall reduce the settlement funds available to pay the members of the Settlement FLSA Collective, and shall be in addition to payments that Isbell shall receive as a member of the FLSA Collective. Any such service payment awarded by the Court shall be distributed by the Settlement Administrator in a separate check mailed contemporaneously with the mailing of checks pursuant to Section 8 and shall be reported to state and federal taxing authorities as non-wage income on IRS Form 1099. Polaris will not oppose any request by Plaintiffs' Counsel for a service payments to Isbell of up to \$5,000.

(c) The Settlement is not conditioned upon the Court's approval of the foregoing amounts of Service Payment. To the extent that such application for Service Payment is not approved by the Court, in whole or in part, the amounts of the application not approved by the Court shall be allocated for the benefit of the members of the FLSA Collective.

#### **7. Indemnification**

The Settlement FLSA Collective members agree that Polaris has not made any representations regarding the taxability of any payments made pursuant to this Agreement. The Settlement FLSA Collective members agree and warrant that they have been and remain solely responsible for the timely payment of all taxes owed by each of them, if any, which have been due, or which may become due to any governmental authority from receipt of any funds received from Polaris pursuant to this Agreement.

#### **8. Settlement Administrator**

(a) The Parties will mutually select a Settlement Administrator to serve as the administrator of the settlement and will ask the Court to approve this selection in the Parties' proposed approval order. The Settlement Administrator will perform services, including, without limitation, establishing and maintaining a QSF; paying from the QSF the amount of attorneys' fees, costs and expenses awarded to Plaintiffs' Counsel; distributing any Court-approved Service Payment to the Isbell from the QSF; dissemination of notices of this settlement to the members of the Settlement FLSA Collective; providing reports to the Parties on a periodic basis of the



identity of the Putative Collective Members who timely submit Claim Forms; calculating the Settlement Payments allocated to each Settlement FLSA Collective member based on the criteria set forth in this Agreement and the workweek information provided by Polaris; calculating and disbursing payment of appropriate taxes to be paid under the settlement from the QSF (including the employer taxes due from Polaris in addition to the Settlement Payment Amount); complying with all applicable tax reporting obligations including issuing 1099s and W-2s to participating Settlement FLSA Collective members and Isbell; preparing and filing all applicable tax forms and amendments or modifications required thereto; distribution of the settlement checks to the participating Settlement FLSA Collective members; compiling copies of tendered settlement checks and providing those copies to Polaris; notifying Polaris' Counsel of any participating Settlement FLSA Collective members who have not cashed their settlement checks within the check cashing period defined in Section 9; issuing a stop-payment directive with the applicable bank with respect to those settlement checks; providing the Claim Forms submitted by the participating Settlement FLSA Collective members Plaintiffs' Counsel to be filed with the Court; preparing a declaration regarding its due diligence in the claims administration process, as well as other activities attendant upon effectuating the Settlement.

(b) The costs of administering the Parties' settlement, including the fees and costs of the Settlement Administrator, shall be paid from the Settlement Payment Amount and shall reduce the settlement funds available to pay the members of the Settlement FLSA Collective. The administration costs are estimated to be a maximum of \$49,000.

## **9. Notice to Members of the FLSA Collective**

(a) Polaris shall provide the Settlement Administrator with a list, in electronic form, of the names of all members of the Settlement FLSA Collective, each of their last known addresses and email addresses (if known), and the number of workweeks each member worked for Polaris from October 4, 2019 to April 6, 2023 (the "Collective List"), within ten (10) days of the entry of the Final Approval Order, which will approve the Parties' choice of Settlement Administrator.<sup>1</sup>

(b) Within twenty-one (21) days after the Court grants Final Approval of the Parties' proposed settlement, the Parties shall instruct the Settlement Administrator to transmit the Notice, Claim Form and Release, in substantially the form attached hereto as Exhibit A to the persons identified on the Collective List (the "Notice"). The Settlement Administrator shall send the Notice by email (if an email address is indicated on the Collective List), and by First Class U.S. Mail to each person identified on the Collective List. For any returned Notices, the Settlement Administrator shall conduct reasonable address verification efforts consistent with the customary practices in the settlement administration industry.

(c) Settlement FLSA Collective members who wish to participate in the settlement shall fully and timely complete, execute and deliver, per the instructions therein, a Claim Form

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<sup>1</sup> In order to facilitate the Settlement Administrator's mailing of Notice documents and issuance of settlement checks, withholding of taxes, and the issuance of tax forms, Polaris, within ten (10) days of the Final Approval Order date, will send to the Settlement Administrator an Excel spreadsheet listing each member of the FLSA Collective's social security number based on Polaris' records. These social security numbers may not be revealed to Plaintiffs' Counsel and must be treated by the Settlement Administrator as strictly confidential.



and Release by the deadline indicated on the Notice. Settlement FLSA Collective members will have sixty (60) days after the Notice is first mailed to submit their Claim Form. Late claims, or claims submitted in a manner that does not comply with the process contained herein, shall not be accepted, unless otherwise agreed by the Parties.

(d) The Settlement Administrator will deliver completed Claim Forms and Release Forms to the Parties within ten (10) days of the close of the notice period.

(e) Within ten (10) days of the receipt of the Claims Forms from the Settlement Administrator, Plaintiffs' Counsel will file the Claim Forms with the Court.

(f) The Settlement Administrator shall mail the settlement checks to the participating Settlement FLSA Collective Members within forty-five (45) days after the close of the Notice Period.

(g) Settlement FLSA Collective members who do not fully and timely complete, execute and deliver a Claim Form and Release: (a) shall not receive a settlement payment and shall have his or her claims under the FLSA dismissed from the Lawsuit, without prejudice.

(h) All Settlement FLSA Collective members who return a Claim Form will be bound by the Approval Order, the Court's dismissal of their claims with prejudice, the final judgment issued by the Court, and the releases set forth in this Agreement.

(i) None of the Parties, their counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to object to the settlement, or appeal from any order of the Court that is consistent with the terms of this settlement, or discourage participation in the settlement claims process; however, Plaintiffs' Counsel may advise Settlement FLSA Collective members how to submit their Claim Forms or provide other advice as required to comply with counsel's ethical obligations.

(j) Any funds unclaimed by Settlement FLSA Collective members shall revert to the Polaris.

(k) Participating Settlement FLSA Collective Members shall have ninety (90) days from the date the Settlement Administrator mails the settlement checks to cash their settlement checks. Any funds associated with uncashed settlement checks after that date shall revert to Polaris. The Settlement Administrator shall refund any funds associated with uncashed Settlement Checks from the QSF to Polaris within thirty (30) days of the close of this ninety (90) day period.

## **10. Calculation of Individual Awards**

(a) Each individual Collective member will receive an amount representing their pro-rata share of the Net Settlement Fund based on his/her/their workweeks of employment for Polaris from October 4, 2019 to April 6, 2023, subject to a \$50.00 minimum payment. The pro-rata share will also include a premium of \$25 for each member of the collective employed by Polaris during the Kronos Outage period, from December 11, 2021 to February 28, 2022.



(b) The estimated individual allocation award will be included in each individual Collective members Notice.

**11. Settlement FLSA Collective Members' Release**

(a) Settlement FLSA Collective members who wish to receive to participate in the settlement must fully and timely complete, execute and deliver, per the instructions therein, a Claim Form and Release by the Notice Response Deadline, in substantially the form attached hereto as Exhibit A.

(b) Each Settlement FLSA Collective member who submits a Claim Form fully releases and discharges Polaris and any of its parent organizations, holding companies, predecessors, affiliates, subsidiaries, divisions, business units, joint venturers, and related companies and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, contractors, agents, representatives, attorneys, insurers, partners, investors, shareholders, and administrators, and any other related persons or entities (the "Releasees") from any and all claims, debts, penalties, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, costs and expenses, damages, actions or causes of action of whatever kind or nature, whether known or unknown, expressly limited to wage and hour claims under the federal Fair Labor Standards Act, and the laws of Alabama, or any other state, local or federal law, including, but not limited to, claims for alleged unpaid regular, minimum or overtime wages, alleged off-the-clock work, payment for all hours worked, miscalculation of wages, unreimbursed business expenses, or retaliation for complaining about wages or for asserting wage-related claims, and any damages, liquidated damages, penalties, interest, fees or costs derivative from those wage and hour claims available under any federal, state, or local law, that were or could have been alleged in the Lawsuit or that reasonably arise out of the acts alleged in the Lawsuit. As of the Effective Date, each participating Settlement FLSA Collective Member shall have released all claims as defined in this Section, even if any Settlement Collective Members do not cash a Settlement Check.

(c) Plaintiff and participating Settlement FLSA Collective members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the claims in this action, but Plaintiff and any participating Settlement FLSA Collective member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the claims whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

**12. Dismissal of Action**

The Final Approval Order shall provide that the action shall be dismissed with prejudice and without costs (except as otherwise provided herein) with the Court retaining jurisdiction over the case for purposes of the completion of the administration of this Settlement, ensuring



compliance with the terms of this Settlement Agreement and any order of the Court issued in connection therewith.

**13. Additional Terms Applicable to Plaintiff Isbell**

(a) **Plaintiff Isbell's Released Claims:** In exchange for the Service Payment, and in addition to the release discussed in Section 11 of this Agreement, Plaintiff Isbell, on behalf of themselves and their heirs, successors, agents and assigns, knowingly release and forever discharge Polaris and the Releasees of, from, and against all debts, sums of money, fees, claims, charges, demands, actions, causes of action, notes, liabilities, and obligations, of whatever nature, whether known or unknown, liquidated, unliquidated, contingent, or otherwise, and whether in contract (express or implied), in tort, by statute or otherwise, which Plaintiff Isbell ever had or now have (or hereafter may have) with respect to anything done or omitted to be done up to the Effective Date and which are or may be based upon any fact, condition, or incident occurring prior to the Effective Date, as well as claims which may arise after the Effective Date that are based or rely upon facts, conditions, or incidents occurring before the Effective Date, including any fact or circumstance related to Plaintiff Isbell's employment or separation of employment from Polaris the Releasees. This release of claims includes but is not limited to all: (i) claims arising out of or related to Plaintiff's Isbell's employment with any of the Polaris and the Releasees and termination of that employment; (ii) claims for compensation or benefits of any kind or amount other than the compensation and benefits set forth in this Agreement; (iii) claims relating to any of Polaris or the Releasees' employment practices or policies; (iv) claims in tort or in contract arising out of any transaction or interaction between Plaintiff Isbell and Polaris or any of the Releasees; (v) claims under any express or implied contract; (vi) claims arising under all provisions of the law and statute applicable in the state in which Plaintiff Isbell last worked for Polaris or any of the Releasees, including without limit, all claims arising under the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, Sections 1981 through 1988 of Title 42 of the United States Code, the Equal Pay Act, 29 U.S.C. § 206(d), the Occupational Safety and Health Act, as amended (OSHA), the Sarbanes-Oxley Act of 2002 (SOX), the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Age Discrimination in Employment Act (ADEA), the Employee Retirement Income Security Act (ERISA), the Americans with Disabilities Act, the Family and Medical Leave Act (FMLA), the Worker Adjustment and Retraining Notification Act, any amendments to the foregoing, and any other federal, state, or local law, statute, or ordinance; (vii) all other claims arising under any other local, state, or federal statutes, regulations or common law including wrongful and/or retaliatory termination and/or discharge of employment claims; contract or promissory estoppel claims; intentional infliction of emotional distress claims; assault and battery claims; negligence claims; tort claims including negligence claims; personal injury claims; third-party claims; slander, libel and/or defamation claims; and/or qui tam claims and any claims for damages or equitable relief including, but not limited to, lost wages, physical injuries, mental anguish, loss of consortium, unpaid compensation, loss of earning capacity, and medical expenses.

(b) Plaintiff Isbell understands that they are releasing claims that they may not know about at this time, and that is their intent.

(c) Notwithstanding the foregoing, nothing in this Agreement is intended to waive Plaintiff Isbell's claims for unemployment or workers' compensation benefits, claims for vested



rights under ERISA-covered employee benefit plans as applicable on the Effective Date, claims that may arise after the Effective Date, or claims which cannot be released by private agreement. In addition, nothing in this Agreement including but not limited to the acknowledgments, release of claims, confidentiality and confidential information, non-disparagement, and cooperation provisions, (a) limits or affects Plaintiff Isbell's right to challenge the validity of this Agreement under the ADEA or the OWBPA; (b) prevents Plaintiff Isbell from communicating with, filing a charge or complaint with or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, or any other any federal, state or local agency charged with the enforcement of any laws, including providing documents or any other information, or (c) limits Plaintiff Isbell from exercising rights under Section 7 of the NLRA to engage in protected, concerted activity with other employees, although by signing this Agreement, Plaintiff Isbell is waiving rights to individual relief (including backpay, frontpay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff Isbell or on their behalf by any third party, except for any right they may have to receive a payment or award from a government agency (and not Polaris or the Releasees) for information provided to the government agency or otherwise where prohibited.

#### **14. Complete Agreement**

Other than as stated herein, the Parties warrant that no representation, promise, or inducement has been offered or made to induce any Party to enter into this Agreement and that they are competent to execute this Agreement and accept full responsibility therefore. This Agreement contains and constitutes the entire understanding and agreement between the Parties and supersedes all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Agreement may not be amended or modified except by a writing signed by authorized representatives of all Parties.

#### **15. Dispute Resolution**

The Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Agreement or any other documents necessary to effectuate the Settlement.

#### **16. Knowing and Voluntary Agreement**

The Parties agree that they are entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Party further affirms that she/he/they has/have not been coerced, threatened, or intimidated into signing this Agreement; that she/he/they has/have been advised to consult with an attorney; and that each of them in fact has consulted with an attorney before signing this Agreement. Plaintiff represents that they have conducted a thorough investigation into the facts of the case. Based on their own independent investigation, analysis of information provided by Polaris, and the extensive mediation which led to this settlement, Plaintiff is of the opinion that the settlement with Polaris is fair, reasonable, and adequate, and is in the best interest of the members of the FLSA Collective, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Polaris.

**17. Potential Voiding of the Settlement Agreement**

(a) If the Court does not approve the settlement terms set forth in this Agreement, or conditions approval on a material change to such terms, this entire Agreement shall be rendered voidable and unenforceable, and the Parties shall resume litigating the Lawsuit unless the Parties jointly agree to another course of action. However, this Agreement shall not be rendered voidable or unenforceable based on the Court's approval or non-approval of a specific amount of attorneys' fees, costs or expenses or based on the Court's approval or non-approval of the Service Payment. The Court's failure to approve Plaintiffs' Counsel's fees, costs and expenses request or the requested Service Payment for Plaintiff Isbell shall not render the remainder of the Agreement unenforceable.

(b) If, after a notice of appeal or a petition for writ of certiorari, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Approval Order such that there is a material modification to the settlement terms outlined in this Agreement, and the reviewing court's decision is not completely reversed and the Approval Order is not fully affirmed on review by a higher court, this entire Agreement shall be rendered voidable and unenforceable, and the Parties shall resume litigating the Lawsuit unless the Parties jointly agree to another course of action.

(c) If this Agreement becomes void and unenforceable, the Parties reserve all rights, claims, and defenses in the Lawsuit. Additionally, if this Agreement becomes void and unenforceable, all negotiations, statements and proceedings related thereto shall be without prejudice to the rights of any Party, all of whom shall be restored to their respective positions in the Lawsuit prior to the settlement; and neither this Agreement, its ancillary documents, actions or filings the Parties agreed to, or any statements made in connection with the negotiation of the settlement, shall be admissible or offered into evidence in the lawsuit or any other action for any purpose.

**18. Notices**

Any notices issued pursuant to the terms of this Agreement shall be sent to the Parties at the addresses of their respective counsel as follows:

For Plaintiff to:

Seth R. Lesser  
KLAFTER LESSER LLP  
2 International Drive  
Suite 350  
Rye Brook, NY 10573

Ryan Winters  
SCOTT & WINTERS, LLC  
50 Public Square  
Suite 1900  
Cleveland, OH 44113

For Polaris to:

John H. Lassetter, *Esq.*  
Niloy Ray, *Esq.*  
Grant D. Goerke, *Esq.*  
LITTLER MENDELSON, P.C.  
1300 IDS Center 80 South 8<sup>th</sup> Street  
Minneapolis, Minnesota 55402



**19. Authority**

Each signatory to this Agreement represents that they are duly authorized to sign for the party or parties they purport to represent.

**20. Severability**

If any party of this Agreement is found to be illegal, invalid, inoperative or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law.

**21. Governing Law**

This Agreement shall be governed by Minnesota law, without regard to that state's choice of law provisions or any other jurisdiction, and, when applicable, the laws of the United States, irrespective of where any action may arise or whether any jurisdiction other than Minnesota has accepted jurisdiction of this matter. The Parties also hereby submit to the jurisdiction of the Court for all purposes relating to the review, approval, and enforcement of the terms of this Agreement.

**22. Binding on Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, issue, next-of-kin, executors, administrators, successors, and assigns.

**23. Counterparts**

This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signer counterparts, shall constitute one Agreement, which shall be binding upon and effective as to the Parties. Execution by facsimile, electronic signature, email or other electronic means shall be deemed effective as if executed in original.

**24. Signatories**

It is agreed that because the participating Settlement FLSA Collective Members are so numerous, it is impossible or impractical and not required to have each participating Settlement FLSA Collective Member execute this Agreement. The Notice will advise all participating Settlement FLSA Collective Members of the binding nature of the releases as applicable under this Agreement and such shall have the same force and effect as if this Agreement were executed by each participating Settlement FLSA Collective Member.

**25. No Prior Assignments**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

**26. Modification**

This Agreement may not be changed, altered, or modified except in writing and signed by the Parties hereto, and approved by the Court, except that the Parties may mutually agree to reasonable extensions of time that do not affect any effective dates. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

**27. Headings**

The headings used in this Agreement are for convenient reference only, and do not alter or limit the terms of each Section.

**IN WITNESS WHEREOF**, the Parties each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.



**Plaintiff:**

  
Leah Isbell (Jul 1, 2023 10:24 CDT)

Leah Isbell

**Plaintiffs' Counsel:**

JOHNSON BECKER, PLLC



Timothy Becker  
Jacob R. Rusch  
JOHNSON BECKER, PLLC  
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