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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

MICHAEL MAKANEOLE, individually
and on behalf of all similarly situated,
Plaintiff,

v.

**SOLARWORLD INDUSTRIES
AMERICA, INC.; SOLARWORLD
INDUSTRIES AMERICA, LP;
SOLARWORLD INDUSTRIES
SERVICES, LLC; SOLARWORLD
POWER PROJECTS, INC.,
RANDSTAD PROFESSIONALS US,
LP, and KELLY SERVICES, INC.,
Defendants.**

Case No. 3:14-CV-01528-PK

**STIPULATION AND
SETTLEMENT AGREEMENT
OF CLASS ACTION CLAIMS AS
TO DEFENDANT RANDSTAD
ONLY**

1. PREAMBLE

1.1 This Stipulation and Settlement Agreement of Class Action (“Settlement Agreement” or “Agreement”) is made by Plaintiff Michael Makaneole, and Defendant Randstad US, LP in the case pending in the U.S. Federal District Court for the District of Oregon, case no. 3:14-CV-01528-PK and subject to the Court’s approval. This Settlement expressly excludes all other defendants in this Action, except for Randstad.

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2. DEFINITIONS

2.1 “Action” means the lawsuit entitled *Michael Makaneole, individually and on behalf of all similarly situated vs. SolarWorld Industries America, Inc.; SolarWorld Industries America, LP; SolarWorld Industries Services, LLC; SolarWorld Power Projects, Inc., Randstad US, LP,¹ and Kelly Services, Inc.*, currently pending in the U.S. District Court of Oregon, Portland Division, case no.3:14-CV-01528-PK.

2.2 “Approved Claimant” means those Class Members who submit a valid and timely Claim Form as required by this Agreement and as approved by the Court.

2.3 “Claim” means a valid and timely Claim Form submitted to the Settlement Administrator.

2.4 “Claim Form” means a document substantially in the form of a Claim Form as attached as Exhibit 2, which has been agreed to by the Parties, subject to Court approval.

2.5 “Class Counsel” means the attorneys at Schuck Law, LLC.

2.6 “Class Members” means all current and former temporary employees of Randstad who were assigned to SolarWorld’s Hillsboro, Oregon manufacturing facility and paid an hourly wage, and who worked in a non-exempt position for Randstad at any time during the Class Period.

2.7 “Class Period” means August 26, 2008 through and including August 26, 2014.

2.8 “Class Representative” means the Plaintiff Michael Makaneole. Class Counsel shall request that the Plaintiff be appointed as the Class Representative for settlement purposes.

2.9 “Court” or “District Court” means the U.S. Federal District Court for the District of

¹ Defendant Randstad US, LP was incorrectly identified as Randstad Professionals US, LP in the Complaint and First Amended Complaint.

Oregon, Portland Division.

2.10 “*Defendant*” or “*Randstad*” means only Randstad US, LP and the associated “Releasees”), but expressly excludes all other entities named as a Defendant in this Action (*i.e.*, it does not include the SolarWorld defendants).

2.11 “*Effective Date*” shall be the later of (a) the Court’s final approval of the Settlement Agreement, if no objections have been filed, (b) the time of appeal has expired if an objection has been filed, (c) or the final resolution of any appeal that has been filed.

2.12 “*Final Judgment*” refers to the Order and Final Judgment Approving Settlement as to Defendant Randstad Only in the proposed form attached hereto as Exhibit 4, which this Settlement contemplates will be entered and approved by the Court.

2.13 “*Final Settlement Approval Hearing*” is the date that the Court will conduct a hearing in which to hear any objections and the Parties’ request to enter the Final Judgment.

2.14 “*Maximum Settlement Liability Amount*” and “*Settlement Amount*” shall be interchangeable terms and mean that Randstad shall pay no more than \$1,050,000.00. This sum shall include all payments to the participating Settlement Class members, class administration expenses, attorneys’ fees and costs, and the service award for Plaintiff, and all applicable employer payroll tax payments (including but not necessarily limited to FICA, FUTA, etc.). No common fund will be created, and this Settlement shall be made on a claims-made basis, with payments tendered for actual claims submitted. Randstad shall pay a total of no more than the Maximum Liability Amount.

2.15 “*Net Settlement Award*” means the Settlement Award less applicable employment taxes.

2.16 “*Notice*” means a document substantially in the form of the Notice of Class Action

Settlement attached hereto as Exhibit 1.

2.17 “*Parties*” means the Plaintiff and Randstad only.

2.18 “*Plaintiff*” means Michael Makaneole.

2.19 “*Releasees*” means Randstad and all of Randstad’s present and former subsidiaries, affiliates, and joint ventures, and all of Randstad’s shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by through, under or in concert with any of them. “*Releasees*” expressly excludes any other entity name as a defendant in this Action besides Randstad (*i.e.*, the SolarWorld defendants).

2.20 “*Response Deadline*” means 45 days after the date on which the Notice and Claim Form were initially mailed to Class Members.

2.21 “*Settlement Agreement*” means the compromise and settlement of the Action as contemplated by this Agreement and all attached exhibits.

2.22 “*Settlement Administrator*” means a neutral third party to administer the Settlement and retained for this purpose by both Parties.

2.23 “*Settlement Award*” means the gross amount each Approved Claimant is eligible to receive.

2.24 “*Settlement Class Members*” are Class Members who do not properly opt out of the Settlement Agreement.

3. RECITALS

3.1 **Procedural Posture.** Plaintiff filed a class action lawsuit in Multnomah County Circuit Court, case no. 14CV12000 on August 26, 2014. The case was removed to the U.S. Federal

District Court of Oregon, Portland Division on September 25, 2014 (case no.3:14-CV-01528-PK). Plaintiff filed a motion for class certification on July 10, 2017. Plaintiff and Defendant Randstad submitted extensive briefing on the issue of certification under Fed.R.Civ.P. 23. The Court heard oral argument on the Motion for Class Certification on December 15, 2017. The Court took the matter under advisement and, as of the date of this Agreement, has not issued a decision regarding Randstad. With the help of mediator Susan Hammer, the Parties were able to reach this Settlement Agreement.

3.2 Investigation in the Action. The Parties have investigated the facts and law during the prosecution of this Action. Such discovery and investigations have included the exchange of information pursuant to formal and informal discovery, conferences between representatives of the Parties, and interviews of potential witnesses. Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding the alleged claims and potential defenses thereto, and the damages claimed by Plaintiff and Class Members.

3.3 Full Investigation and Benefits of Settlement to Class Members. Plaintiff claimed and continues to claim that the Released Claims, as defined in this Agreement, have merit and give rise to liability. However, Plaintiff recognizes the expense and length of continued litigation against Randstad through trial and any possible appeals. Plaintiff has taken into account the uncertainty and risk of the outcome of further litigation against Randstad, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, and Randstad's defenses thereto. Plaintiff has also taken into account the extensive settlement negotiations conducted. Based on the foregoing, Plaintiff has determined that the settlement set forth in this Agreement is

a fair, adequate and reasonable, and is in the best interests of all Class Members. Neither this Agreement, any documents referred to herein, nor any action taken to carry out this Agreement is, or may be construed as or may be used as an admission by or against the Plaintiff or Class Counsel as to the merits or lack thereof of the claims asserted.

3.4 **Randstad's Denial of Claims and Reasons for Settlement.** Randstad has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action, including that Plaintiff suffered damage. By settling this matter, Randstad does not admit liability of any kind. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, may be construed as, or may be used as an admission, concession or indication by or against Randstad of any fault, wrongdoing or liability whatsoever.

4. SETTLEMENT TERMS

4.1 NOW, THEREFORE, IT IS HEREBY STIPULATED, and subject to the approval of the Court, the Parties agree and stipulate that the Action as to Defendant Randstad is hereby being compromised and settled pursuant to the terms in this Agreement and that subject to the Recitals above and by this reference become an integral part of this Agreement.

4.2 Released Claims.

4.2.1 Settlement Class Members' Release of Claims:

Upon the Effective Date of the Settlement Agreement, and except as to the right to enforce the terms and conditions of the Settlement Agreement, all Settlement Class Members who do not request exclusion hereby fully release Randstad, and all of Randstad's present and former subsidiaries, affiliates, and joint ventures, and all of Randstad's shareholders, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting

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by through, under or in concert with any of them (“Releasees”) from any and all wage and hour claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney’s fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that were alleged or that reasonably could have been alleged based on the facts alleged in the Lawsuit, as amended, including, but not limited to, any wage and hour claims under federal law and Oregon State law, statutes and regulations, any claims for unpaid overtime, claims for missed meal or rest breaks, claims for liquidated damages, claims for unlawful deductions from wages, claims for conversion of wages, claims for record-keeping violations, late payment and overtime penalties, and claims under applicable Oregon statutes including but not limited to ORS 652.120, 652.140, 652.150, 652.200, 653.010, 653.055, 653.261, 653.055, 653.261 OAR 839-020-0030, 839-020-0050, ORS 82.010, as well as any other Oregon State and federal wage and hour statute or regulation. This Agreement is conditioned upon the release by all Settlement Class Members of any claims above, and upon covenants by all members that they will not participate in any proceeding seeking penalties as to the released claims set forth above. The Parties stipulate that beyond the Maximum Liability Amount, Randstad and the Releasees shall not owe any further monies to the Settlement Class or to the State of Oregon based upon any claim made in the Lawsuit or in any complaint filed therein. This Release applies to any work for Randstad at the SolarWorld facility in Oregon through preliminary approval of the settlement. Nothing in this settlement shall have any effect on claims class members may have against any other Defendant in this matter, although to the extent any claim against any other Defendant is asserted in any manner against Randstad (e.g., including but not limited to joint or joint and several) liability, such claims are released as to Randstad, and Plaintiff and the Class Members shall have no claims, recourse, or recovery against Randstad.

4.2.2 General Release of Claims by Plaintiff. As of the Effective Date and in addition to the Released Claims, Plaintiff releases Randstad and the Releasees from:

Any and all claims, rights, demands, actions, liability, counter claims, damages, claims for attorney fees and costs, causes of action of every kind and character, and compensation of whatever kind or nature, in law, equity, or otherwise, known or unknown, vested or contingent, suspected or unsuspected, matured or unmatured, which either party may now have or has ever had, whether based on tort, contract (express or implied), or federal, state, or local statute, regulation, ordinance, constitution, executive order, or other law, specifically including, but not limited to, Title VII of the Civil Rights Act of 1964, ORS Chapters 659 and 659A, the Fair Labor Standards Act, the 1991 Civil Rights Act, the Equal Pay Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Family Medical Leave Act, the Oregon Family Leave Act, the Plaintiff Retirement Income Security Act, the Consolidated Omnibus Reconciliation Act of 1985, Age Discrimination in Employment Act of 1967 (“ADEA”), 29 U.S.C.

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section 621 et seq., State and Federal Racketeering Acts, Executive Order 11246, all federal and state retaliation statutes, and all federal and state Civil Rights statutes or ordinances (including sections 1981 and 1983).

4.2.3 Older Workers' Benefit Protection Act as to Plaintiff only. Plaintiff

acknowledges that (1) he was advised in writing to consult with an attorney before executing this Agreement; (2) he has been represented and advised by independent counsel of his own choice throughout all negotiations that preceded the execution of this Agreement; (3) he is aware of his rights under the Older Workers' Benefit Protection Act; (4) as consideration for executing this Agreement, he has received additional benefits and compensation of value to which he would otherwise not be entitled; (5) he has been given a period of at least twenty-one (21) days to consider this offer if he wishes; and (6) Plaintiff may revoke this Agreement by delivering a written notice to Michael W. Kopp at Seyfarth Shaw LLP 400 Capitol Mall, Suite 2350, Sacramento, CA 95814, within seven (7) days of signing this Agreement.

4.2.4 Protected Rights. The Release of Claims does not apply to any claims that Plaintiff or Settlement Class Members may have for workers' compensation benefits or any other non-waivable rights.

4.2.5 Although Class Members who do not submit a valid and timely Claim Form, as required by this Agreement, shall not receive a Settlement Award, such persons shall nonetheless be bound by the Released Claims as of the Effective Date.

4.3 Maximum Settlement Liability Amount. Randstad shall pay no more than \$1,050,000.00 ("Maximum Settlement Liability Amount" or "Settlement Amount"). The Settlement Amount shall include payment of all Settlement Awards, settlement administration

costs, Class Representative Service Award, Attorney Fees and Costs Award to Class Counsel, and all applicable employer payroll tax payments (including but not necessarily limited to FICA, FUTA, etc.), as allocated in this Agreement. No common fund will be created. This Settlement shall be on a claims-made basis only, with payments tendered for actual claims submitted by Class Members.

4.3.1 **Settlement Awards:** Each Approved Claimant will receive a Settlement Award of \$898.68, less applicable employment taxes resulting in a “Net Settlement Award” based on timely submission of a valid claim form.

4.3.1.1 Randstad has represented that the class consists of a total of 755 class members. In the event the actual class size exceeds this amount by no more than 20 class members, the maximum liability amount would increase per class member up to a maximum of an additional \$1,124.18 (\$898.68 claim amount, and \$375.50 attorney fees).

4.3.1.2 In the event the actual class size exceeds this amount (i.e., the actual class size is greater than 775), Randstad shall have the option to pay an additional sum necessary to increase the Maximum Liability Amount by the following formula (\$898.68 in claim payment, \$52.98 administration, and \$375.50 in attorneys’ fees per additional class member), or to unilaterally void the Settlement Agreement.

4.3.2 **Class Representative Service Award:**

4.3.2.1 The Class Representative Service Award shall be paid to Plaintiff Michael Makaneole in the amount of \$8,000.00 from the Settlement Amount, subject to approval from the Court.

4.3.2.2 Because Plaintiff signed this Settlement Agreement, Plaintiff shall receive a Settlement Award in addition to the Service Award without the requirement of submitting a Claim Form.

4.3.2.3 The Service Award is subject to Court approval and an award of less than the requested amount will not give rise to a basis to abrogate the Agreement.

4.3.3 **Attorney Fees and Cost Award:** Schuck Law, LLC, as Class Counsel, shall be paid \$283,500.00 as attorney fees, and \$40,000.00 as costs, (collectively “Attorney Fees and Cost Award”), and subject to Court approval.

4.3.3.1 The Parties agree that an award of less than the amounts requested as the Attorney Fees and Costs Award would not give rise to a basis to abrogate the Settlement Agreement. Class Counsel shall not petition for, or accept, any additional payments for fees, costs or interest, except as provided in section 4.3.1.1 and 4.3.1.2. The Attorney Fee and Cost Award is separate and distinct from the cost of settlement administration.

4.3.3.2 The Attorney Fee and Cost Award is for all claims for attorneys’ fees and costs incurred in the Action as to Defendant Randstad only. The Attorney Fees and Costs Award shall satisfy any and all claims Plaintiff, Class Counsel, and Settlement Class Members have against Randstad, and waive any additional claim for attorneys’ fees and costs incurred in connection with the Action as to Randstad, subject to section 4.3.1 for additional class members.

4.3.4 **Settlement Administration Costs.** The costs of settlement administration shall be no more than \$40,000.00. In the event that the total costs of Administration exceed

the \$40,000.00, the additional costs shall be paid from the Settlement Amount.

4.3.5 Uncashed Settlement Awards. If any Settlement Award paid pursuant to this Agreement is not cashed or otherwise negotiated within 90 days after issuance of the payment, those funds will be distributed as follows: the uncashed checks shall be treated as unclaimed funds and deposited with the Oregon State Bar funding for Legal Services Program. The Settlement Administrator shall advise the Parties' counsel whether there were any unclaimed funds, that the unclaimed funds were paid accordingly, and that it has fully complied with its obligations under this Agreement and as ordered by the Court.

4.3.6 Timing of Payments. If no objection to the settlement is made, then Randstad shall pay the funds necessary to cover the claims made in the Settlement, approved Attorneys' Fees and Costs Award, the approved Class Representative Service Award and Settlement Administration Costs, up to the Maximum Settlement Liability Amount, to the Settlement Administrator within fifteen (15) calendar days after the Effective Date.

4.3.6.1 The Settlement Administrator shall pay within 30 days of the Effective Date the Class Representative Service Award, and as awarded by the Court, by check payable to Plaintiff and sent to him via Class Counsel.

4.3.6.2 The Settlement Administrator shall pay within 30 days of the Effective Date the Attorney Fee and Cost Award, as awarded by the Court, by check payable to Schuck Law, LLC.

4.3.6.3 After receiving the funds from Randstad, the Settlement Administrator shall be entitled to funds from the Settlement Amount within five (5) business days after submitting detailed invoices to the Parties' counsel, provided counsel

has no objections or questions to the amount requested, and up to the \$40,000 allocated by this Agreement.

4.3.6.4 If Randstad fails to pay the funds necessary, up to the Maximum Settlement Liability Amount, to the Settlement Administrator as required by this Agreement, then Plaintiff may immediately request enforcement of the Agreement, any Court orders regarding the settlement, the Final Judgment, and other relief as approved by the Court.

4.3.7 Taxes.

4.3.7.1 The Settlement Award to each Approved Claimant will be allocated to 95% penalties and interest, and 5% wages. From each Settlement Award, the Settlement Administrator shall calculate payroll deductions, if necessary, for state and federal taxes and any other applicable payroll deductions properly chargeable to each Approved Claimant, resulting in a “Net Settlement Award.”

4.3.7.2 Each person receiving any payment under this Agreement shall be responsible for reporting and filing any tax returns as required by law as a result of any payment received pursuant to this Agreement. Each individual receiving any portion of the Settlement Amount shall be solely responsible for the payment of any and all taxes or other liabilities owed by him/her for any amounts received.

4.3.7.3 Any employer required taxes shall be paid from the Settlement Amount, and based on the allocation of wages in section 4.3.7.1.

4.3.8 Effect of Settlement Payments. The Parties expressly agree that any amounts paid as required by this Agreement shall not have any effect on the eligibility for — or

calculation of — any employee benefit provided by Randstad, including but not limited to: vacation, holiday, retirement, cafeteria, dependent care, and Oregon's sick time. The Parties agree that any payment pursuant to this Agreement does not represent any modification of any employee's previously credited hours of service or other eligibility criteria under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. These payments also will not be considered wages, compensation, or annual earnings for benefits in any year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit plan, employee welfare benefit plan or other program or policy.

4.3.9 No person shall have any claim against the Released Parties, Randstad's Counsel, Plaintiff, the Class, Class Counsel or the Settlement Administrator based on distributions and payments made in accordance with this Agreement.

4.3.10 If after payment of the settlement administration costs, Class Representative Service Award, and Attorney Fees and Costs Award, should the total of all valid and timely claims made, plus employer required taxes exceed the Maximum Settlement Liability Amount, the Settlement Awards will be reduced pro rata, subject to section 4.3.1 for additional class members.

4.4 **Settlement Administrator.** The Parties agree that Rust Consulting shall act as the Settlement Administrator, subject to Court approval. The Parties agree to cooperate in the Settlement administration process and to make all reasonable and good faith efforts to control and minimize the costs and expenses incurred in administration of the Settlement. The Settlement Administrator shall be responsible for:

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4.4.1 Designating a primary contact person at Rust Consulting who shall be responsible for complying with this Agreement and Court's orders;

4.4.2 All administrative duties, including, but not limited to: preparing, printing and mailing the Notice and the Claim Form to the Class Members, keeping track of requests for exclusion, performing an initial National Change of Address (NCOA) search upon receipt of the Class Member mailing addresses, mailing the Class Settlement Notices, performing only one skip trace on Class Settlement Notices returned as undeliverable;

4.4.3 Calculating and tendering Settlement Awards on a claims-made basis to Approved Claimants, based on the terms of this Agreement,

4.4.4 Promptly responding, to Class Members' questions, comments, or inquiries;

4.4.5 Provide both Parties' counsel with weekly reports detailing the number of Claim Forms received, the number of returned envelopes and re-mailings, the number of Request for Exclusions, objections received, and such other information that is reasonably related to administration of the Settlement;

4.4.6 Obtaining tax identification number(s) for Randstad applicable to the Settlement

4.4.7 Mailing one set of the Class Members Payments and tax forms to Approved Claimants;

4.4.8 Report payment of the individual Class Member Payments to all required taxing and other authorities, take appropriate withholdings and payroll taxes, forward payments for withholdings and payroll taxes and issue Internal Revenue Service Forms W-2 and 1099.

4.4.9 Other tasks as the Parties mutually agree or the Court orders the Settlement

Administrator to perform.

4.5 **Preliminary Approval Hearing.** Plaintiff shall request a hearing before the Honorable Paul Papak in the U.S. Federal District Court for the District of Oregon for preliminary approval of the Settlement, which requests certification of a settlement class as to Defendant Randstad only. Class Counsel shall provide to Randstad's counsel a copy of the preliminary approval motion and supporting documents with seven (7) days to review any such materials prior to filing. Class Counsel shall seriously consider in good faith Randstad's counsel's comments before filing. In conjunction with preliminary approval, Class Counsel and Randstad's Counsel will jointly submit this Agreement and seek approval from the Court, including the entry of the Preliminary Approval Order substantially in the form of Exhibit 3. The Preliminary Approval Order shall include: approving the proposed Settlement, certifying the class for settlement purposes only, appointing Plaintiff as the class representative, appointing Schuck Law, LLC as Class Counsel, appointing Rust Consulting as the Settlement Administrator. The Preliminary Approval Order shall provide for notice and claim forms to be sent to Class Members as specified herein, and scheduling the Final Settlement Approval Hearing to determine final approval of the Settlement.

4.6 **Class List.** Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Randstad shall provide the Settlement Administrator with a class list in excel format.

4.6.1 The class list to the Settlement Administrator shall include the following information: the names, employment identification number, last known addresses, last known telephone numbers, and social security numbers of each Class Member.

4.6.2 This information will be provided to Class Counsel, in excel format, with the

exception of the first five digits of class members' social security numbers, which will be redacted.

4.6.3 The class list will be considered confidential and subject to the protective order in this Action, and is to be used for purposes of the settlement only. At the end of the settlement administration, Class Counsel is to destroy all originals and copies of the class list in any form it is maintained, including but not limited to paper and electronic copies.

4.7 **Class Action Fairness Act.** This Action was removed from Multnomah County Circuit Court to Federal Court under the jurisdiction requirements of the Class Action Fairness Act ("CAFA"). As required by CAFA, Randstad shall provide notice to the U.S. Attorney General, the United States Department of Labor, and the Department of Labor (or other appropriate contact) for each of the States and/or territories where any of the Class Members are known to reside as of the date the Agreement is filed with the Court and submitted for its approval. The form of CAFA notice agreed to by the Parties is attached hereto as Exhibit 5. Such CAFA notice shall be made by Randstad within ten (10) days after the filing of the Motion for Preliminary Approval by Class Counsel. The final fairness hearing will not be set until at least ninety (90) days after the CAFA notice has been mailed to the federal and state officials as noted above.

4.8 **Notice of Class Action Settlement.** The Parties agree that the Notice shall be provided in English only and in the format provided in Exhibit 1, subject to Court approval.

4.8.1 **Mailing.** Within 30 calendar days after preliminary approval, the Settlement Administrator shall mail a copy of the Notice and Claim Form to each Class Member. The Settlement Administrator shall mail the Notice and Claim Form to the address provided by Randstad, provided by Class Counsel, and any different mailing address

from the U.S. Postal Service after performing an initial National Change of Address (“NCOA”) search.

4.8.2 **Returned Undeliverable Mail.** Any Notice returned as undeliverable shall be remailed to the forwarding address affixed thereto, if a Notice has not already been sent to that address. If no forwarding address is provided, then the Settlement Administrator shall promptly perform only one skip trace on the on Notices returned as undeliverable. Any Notices returned within five (5) business days before the Response Deadline shall not be remailed. In the event the procedures in this paragraph are followed and the Class Member still does not receive the Notice, the Class Member shall not be entitled to a Settlement Award.

4.9 **Claim Forms.** To receive a Settlement Award, Class Members are required to submit a valid and timely Claim Form to the Settlement Administrator on or before the Response Deadline.

4.9.1 **Methods to Submit Claim Forms.** Class Members can submit a Claim Form either by mail, facsimile, overnight delivery, or email. Any other means of Claim submission must be approved by all of the Parties.

4.9.2 **Claim Form Requirements to Be Valid.** The Notice shall include instructions on how to submit a valid and timely Claim Form. The Notice shall notify Class Members that in order for the Claim Form to be valid, it must include the employee’s name, last four digits of their social security number and be signed, dated and submitted no later than the Response Deadline to be eligible to receive any Settlement Award. If submitted by email, the Claim Form must be included as a clear image or attachment with all of the

required information to be valid. Any email attachment that is not a readable image is not valid.

4.9.3 Claim Form Requirements to Be Timely. All Claim Forms must be submitted or postmarked by the Response Deadline. The date of the postmark, date on the facsimile, or date on the email shall be the exclusive means used to determine whether a Claim Form is timely. Claim Forms postmarked or received by the Settlement Administrator after the Response Deadline shall be so designated as untimely and rejected. Any Claim Forms received directly by Class Counsel shall be immediately forwarded to the Settlement Administrator with the envelope, with any attorney-client privileged information redacted.

4.9.4 Defective Claim Forms. If the Settlement Administrator receives a timely Claim Form that is defective as to the Claim Form Requirements, *except timeliness*, the Class Member shall be given one (1) opportunity to cure the defect(s).

4.9.4.1 A defective Claim Form shall be returned to the Class Member, who will be informed of the defect(s).

4.9.4.2 The Class Member will be given until the Response Deadline to cure the defect(s) and return the Claim Form to the Settlement Administrator.

4.9.4.3 All defective Claim Forms not cured and submitted by the Response Deadline shall be designated as invalid with no right to cure or eligibility to receive a Settlement Award.

4.9.5 Notice of Denied Claim. Within 20 days after the Effective Date, the Settlement Administrator will send a Notice of Denied Claim to anyone who submitted a Claim

Form that was not timely and/or not valid, stating the reason the claim was denied.

4.10 **Objections To or Exclusions from the Settlement.** Class Members wanting to request exclusion or file an objection must do so on or before the Response Deadline.

4.10.1 **Objections to Settlement.** The Notice shall provide that Class Members who wish to object to the Settlement must file with the Court, in the case record, and serve on the Settlement Administrator a formal written statement objecting to the Settlement by the Response Deadline.

4.10.1.1 The objection must include the Class Member's full name, their name(s) while employed by Randstad, the specific basis of the objection to the Settlement, along with any and all documents that support the objection.

4.10.1.2 Objecting Class Members wishing to appear at the Final Settlement Approval hearing must file and serve before the Response Deadline their intention to appear with their written formal objection.

4.10.1.3 Class Members who fail to timely file and serve their written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Settlement and shall be bound by the terms of the Settlement, to the extent allowed by Oregon law.

4.10.2 **Requests for Exclusion.** The Notice shall provide that Class Members who do not want to be bound by the Released Claims may exclude themselves from the Class and Settlement by *mailing* a Request for Exclusion on or before the Response Deadline.

4.10.2.1 The Request for Exclusion must be a legible and written statement

expressing the desire to be excluded and must include: the case name and number, the Class Member's full name and name(s) while employed by Randstad, his/her current address, telephone number and last 4 digits of his/her social security number.

4.10.2.2 The postmarked date on the envelope that contains the request for exclusion shall be the exclusive means used to determine whether a request for exclusion has been timely submitted.

4.10.2.3 Any Class Member who requests to be excluded from the Class will not be entitled to any recovery from the Settlement Amount and will not be bound by the Released Claims or have any right to object, appeal or comment thereon.

4.10.2.4 Any requests for exclusion received directly by either Party's counsel shall be immediately forwarded to the Settlement Administrator with the envelope.

4.10.2.5 Class Members who fail to submit a valid and timely request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this Litigation, to the extent allowed by Oregon law.

4.10.2.6 Randstad retains the right, in the exercise of its sole discretion, to nullify the Settlement Agreement within ten (10) business days after the Response Deadline, if 38 or more of the Class Members (i.e. 5% of the Class Members), request exclusion from the Settlement.

4.11 **Multiple Responses from A Class Member.** If a Class Member submits more than one valid and timely Claim Form, and does not request exclusion, the Class Member shall only be eligible to receive a Settlement Award as if one valid and timely Claim Form was submitted. Any Class Member who timely submits both a Claim Form and a request to opt-out shall be deemed to have submitted only a valid Claim Form and the request to opt-out shall be deemed null and void.

4.12 **Final List of Approved Claimants and Excluded Class Members.** No later than five (5) business days after the Response deadline, the Settlement Administrator shall provide the Parties' counsel with a complete list of all Class Members who have timely requested exclusion, who submitted valid and timely claims. The Settlement Administrator shall provide copies of all objections to the Parties' counsel.

4.13 **Settlement Approval Hearing and Entry of Final Judgment.** In accordance with the deadlines set by the Court in the Preliminary Approval Order, Class Counsel shall request that the Court grant final approval and entry of the Final Judgment. Class Counsel shall provide to Randstad's counsel a copy of the motion requesting final approval and supporting documents with seven (7) calendar days to review any such materials prior to filing. Class Counsel shall seriously consider in good faith Randstad's counsel's comments before filing. Subject to section 4.10.2.6, Randstad shall stipulate and agree to final approval and entry of the Final Judgment.

4.13.1 Within five (5) business days before the Settlement Approval Hearing, the Settlement Administrator shall provide a signed declaration detailing the notice procedures, the number of Approved Claimants, the number of requests for exclusion, and providing as attachments the Notice and Claim Form, and list of Approved

Claimants. The Settlement Administrator shall include other such information as requested by the Parties.

4.13.2 The Parties shall present a Final Judgment for approval and entry in the form attached hereto as Exhibit 4. After entry of the Final Judgment, the Court shall have continuing jurisdiction for purposes of addressing: (i) settlement administration matters and (ii) such post-Final Judgment matters as may be appropriate or as set forth in this Agreement.

4.14 Payment of Settlement Awards.

4.14.1 The Settlement Administrator shall issue and mail the Net Settlement Awards to Approved Claimants within 30 calendar days of the Effective Date. The Net Settlement Awards shall be paid by check and will include the following language on the back:

“Signing or negotiating this check releases all my claims against Defendant Randstad as detailed in the Notice to Class Members in *Makaneole v. Randstad, et al.*”

4.14.2 The Settlement Administrator’s determination of whether a Claim Form is valid and timely, the amounts of any Net Settlement Award, shall be conclusive, final and binding on all Parties, including all Approved Claimants, subject to review by Class Counsel, Randstad, Randstad’s counsel, and the Court, if necessary.

4.14.3 The Net Settlement Awards to Approved Claimants shall remain valid and negotiable for ninety (90) days from the date of their issuance and may thereafter automatically be canceled if not cashed by an Approved Claimant within that time, at which time the amount shall automatically become a part of the Residual, as described above.

4.14.4 Administration of the Settlement shall be completed on or before one hundred twenty (120) days after the date the Settlement Award checks were issued, including any transfer of unclaimed funds. Upon completion of administration of the Settlement, the Settlement Administrator shall provide written certification of completion to the Court, Class Counsel, and Randstad's Counsel.

4.15 Appraisal and Certification By Settlement Administrator. The Settlement Administrator shall keep Randstad's counsel and Class Counsel equally apprised of the status of the Settlement Administration until completion of the settlement. Any decisions regarding the administration that are not addressed in this Agreement shall be submitted to the Parties' counsel jointly. The Settlement Administrator shall make appropriate steps to secure the privacy of Class Member information consistent with Oregon and federal law.

4.16 No Solicitation of Objections or Requests for Exclusion. The Parties agree to use their best efforts to carry out the terms of this Settlement. The Parties shall do nothing to solicit Class Members to Request Exclusion to the Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit objections to the Settlement or appeal from the Final Judgment. Both Parties agree to use their best good faith efforts to carry out the terms and conditions of this Agreement. Nothing in this Agreement is intended or to limit Class Counsel's duties to clients under the Oregon Rules of Professional Conduct.

4.17 Waiver of Right to be Excluded, Object, and/or Appeal. Plaintiff agrees to not request exclusion from the Settlement. The Parties agree and are bound by the terms herein. The Parties further agree not to object or appeal from an order of Preliminary Approval, order

granting final approval, and/or the Final Judgment. Non-compliance by any Party with this paragraph shall be void and of no force or effect. Any such request for exclusion or objection to the Settlement by either Party shall therefore be void and of no force or effect.

4.18 Randstad's Fees, Costs and Expenses. All of Randstad's own legal fees, costs and expenses incurred in this Action and through final completion of the Settlement shall be borne by Randstad. The Parties agree to cooperate in the Settlement administration process and to make all reasonable and good faith efforts to control and minimize the costs and expenses incurred in administration of the Settlement.

4.19 Class Members' Participation. Randstad agrees that the identities of Approved Claimants will not be disclosed to those individuals' direct supervisors. Randstad further agrees that Class Members' participation in this Action and Settlement shall have no effect on current or future employment. The Parties agree to make appropriate steps to secure the privacy of Class Member information consistent with Oregon law.

4.20 No Rehire and Verification of Employment as to Plaintiff only. Plaintiff agrees that he shall not apply for any position with Defendant Randstad, and hereby relinquishes all employment and agrees that he has no right to any employment, reemployment, or employment benefits of any kind. Should Plaintiff apply for any position with Randstad, Plaintiff agrees the application is void and of no effect. In response to any inquiries regarding Plaintiff's employment, Randstad agrees be limited in only providing the dates of Plaintiff's employment, rate of pay, and job description.

4.21 Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Action as to Defendant Randstad only, in abeyance pending the Settlement Hearing and for purposes of

administration of this Settlement. The Parties and their counsel shall cooperate with each other and the Settlement Administrator by using their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court.

4.22 **Stay on New Actions.** The Parties represent that they are not aware of any other actions pending against Randstad by Class Members for unpaid wages due to work performed at the SolarWorld Oregon facility. However, the Parties will request that the Court, in its preliminary approval of the Settlement Agreement, enjoin Class Members from initiating or prosecuting any proceeding on any claim to be released under the Settlement Agreement. This does not apply to Plaintiff's prosecution of separate claims against the SolarWorld defendants.

4.23 **Entire Agreement and Exhibits.** Each of the Parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the Parties. Each Party has had opportunity to consult with their legal counsel before signing this Agreement. This Agreement includes the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Upon execution of this Agreement by all Parties and their counsel, this Agreement along with all reference exhibits shall supersede the Memorandum of Understanding / Term Sheet ("MOU") completely, and without regards to any variation, if any, between this Agreement and the MOU. This Agreement constitute the entire agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this

Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties, or as ordered by the Court.

4.24 **Authorization to Enter Into Settlement Agreement.** Each Party's counsel signing this Agreement warrants and represents that they are expressly authorized by the Party they represent to negotiate this Agreement and to take all appropriate action required or permitted pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The persons signing this Agreement on behalf of Randstad represent and warrant that they are authorized to sign this Agreement on behalf of Randstad US, LP.

4.25 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and a facsimile signature and a PDF scanned signed copy may be accepted as an original for purposes of executing this agreement.

4.26 **Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.

4.27 **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

4.28 **Oregon Law Governs.** This Agreement and the exhibits hereto shall be governed by

and interpreted according to Oregon State laws.

4.29 **Invalidity of Any Provision.** Invalidation of any material portion of this Settlement shall invalidate this Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining provisions of the Settlement are to remain in full force and effect.

4.30 **Qualified Stipulation to Class Certification.** Randstad's qualified stipulation to certification of a settlement class is for purposes of settlement only. Absent final approval of the Settlement Agreement, Randstad does not stipulate to class certification, and will not be estopped as a result of any motion for settlement approval. Absent the Court granting final approval of the Settlement, Randstad reserves all rights to oppose class certification, and the Parties will revert to their positions they had before this Agreement and the MOU.

4.31 **Failure to Approve.** If the Court does not approve either preliminarily or finally any material term or condition of the Settlement Agreement, or if the Court effects a material change, then the Settlement Agreement will be voidable and unenforceable, subject to the Parties' agreement to the contrary, and the costs of administration, if any, shall be split equally between the Parties.

4.32 **Settlement is Fair, Adequate and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action as alleged against Randstad and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached under the auspices of an independent mediator, Susan Hammer.

4.33 **No Undue Publicity.** Neither Plaintiff nor Class Counsel shall cause to be publicized or initiate, directly or indirectly, any discussion resulting in or the existence of this Agreement or its

terms in any type of mass media, including, but not limited to, speeches, press conferences, press releases, interviews, television or radio broadcasts, newspapers, website postings, messages on the Internet, Facebook, Twitter or any other social media. Subject to Court approval and upon Randstad showing of material and substantial harm, breach of this provision shall entitle Randstad to nullify this Agreement and the Settlement Agreement at any time before the Effective Date. Without limitation by the foregoing, Randstad also may enforce this provision through an action for injunctive relief. Plaintiff waives any obligation by Randstad to file a bond in connection with any such action. In response to any media inquiry, Plaintiff and Class Counsel may respond that the matter has been resolved based on the terms in the Settlement Agreement as filed with the Court and believe it is a fair and reasonable resolution. Class Counsel may also state on their website that the case has been settled based on the terms submitted to the Court and in the case record, and provide a short and plain description of the claims that were settled. This provision does not apply to any publications ordered by the Court.

**SIGNATURE PAGE
PLAINTIFF**

Date: February 09, 2018



Michael Makaneole

Date: Feb. 9, 2018

PLAINTIFF'S AND CLASS COUNSEL

By Karen A. Moore
David A. Schuck, OSB 993564
Stephanie J. Brown, OSB 030019
Karen A. Moore, OSB 040922
Attorneys for Plaintiff and Class

**DEFENDANT RANDSTAD PROFESSIONALS
US, LP**

Date: _____

By: _____

Its: _____

**RANDSTAD PROFESSIONALS US, LP'S
COUNSEL**

Date: _____

By _____
Andrew Moses, OSB 983009
Gerald L. Maatman, Jr., admitted *Pro Hac Vice*
Michael W. Kopp, admitted *Pro Hac Vice*
Attorneys for Defendant

SIGNATURE PAGE

PLAINTIFF

Date: _____

Michael Makaneole

PLAINTIFF'S AND CLASS COUNSEL

Date: _____

By _____
David A. Schuck, OSB 993564
Stephanie J. Brown, OSB 030019
Karen A. Moore, OSB 040922
Attorneys for Plaintiff and Class

DEFENDANT RANDSTAD PROFESSIONALS
US, LP

Date: 2-9-2018

By Jay Ferguson
Jay Ferguson
CLO

RANDSTAD PROFESSIONALS US, LP'S
COUNSEL

Date: 2/9/2018

By Gerald L. Maatman, Jr.
Andrew Moses, OSB 983009
Gerald L. Maatman, Jr., admitted *Pro Hac Vice*
Michael W. Kopp, admitted *Pro Hac Vice*
Attorneys for Defendant

LIST OF EXHIBITS

1. Class Notice
2. Claim Form
3. Preliminary Approval Order
4. Order and Final Judgment Approving Settlement as to Defendant Randstad Only
5. CAFA Notice

CERTIFICATE OF SERVICE

Michael Makaneole v. SolarWorld, et al., case no. 3:14-CV-01528-PK

I hereby certify that I caused to be served the foregoing Stipulation and Settlement Agreement of Class Action Claims against Defendant Randstad Only upon:

John B. Dudrey
Stoel Rives
760 SW Ninth Ave, Ste 3000
Portland, OR 97205
jdudrey@stoel.com
Attorney for SolarWorld Defendants

Michael W. Kopp
Seyfarth Shaw
400 Capitol Mall #2350
Sacramento, CA 95814
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Gerald L Maatman
Seyfarth Shaw, LLP
131 S Dearborn St., #2400
Chicago, IL 60603
gmaatman@seyfarth.com
Attorneys for Defendant Randstad

by electronic mailing through the CM/ECF system, in accordance with Fed. R. Civ. P. 5(d), on February 12, 2018.

DATED: February 12, 2018.

Schuck Law, LLC

/s/ Karen A. Moore
KAREN A. MOORE, Esquire
OSB # 040922, WSB # 42476
(360) 566-9243
Attorney for Plaintiff