

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of All Claims (“**Agreement**”) is made and entered into by Kirk Nelson and John Evans (“**Named Plaintiffs**”), on behalf of themselves and on behalf of all other Opt-in Plaintiffs who have filed their Consents to join this lawsuit (collectively “**Opt-in Plaintiffs**”) on the one hand, and Defendants Sabre Companies LLC and Sabre Energy Services LLC (the “**Defendants**”) on the other hand. Collectively the Named Plaintiffs and the Opt-in Plaintiffs shall be referred to as “**Plaintiffs**.” The Named Plaintiffs, Opt-in Plaintiffs, and the Defendants shall be referred to jointly as the “**Parties**” and singularly as “**Party**.”

WHEREAS, the Named Plaintiffs have brought a civil collective action against the Defendants, captioned, *Kirk Nelson, Individually and on behalf Others Similarly Situated v. Sabre Companies LLC and Sabre Energy Services LLC*, No. 1:15-cv-00314, filed in the Northern District of New York (the “**Lawsuit**”), alleging violations of the Fair Labor Standards Act (29 USC §§ 201 et. seq., hereinafter “**FLSA**”) and Arkansas Minimum Wage Act (Ark. Code § 11-4-218 “**AMWA**”);

WHEREAS, the Named Plaintiffs, through their counsels, Elmer R. Keach, III, Maria Dyson, Law Offices of Elmer Robert Keach, III, P.C., One Pine West Plaza – Suite 109, Albany, NY 12205; Nicholas A. Migliaccio, Jason S. Rathod, Migliaccio & Rathod LLP, 412 H Street NE, Suite 302, Washington, DC 20002; Daniel A. Rihn, Robert Peirce Associates PC, 707 Grant Street, Suite 2500 Pittsburgh, PA 15219; Danielle L. Perry, Gary E. Mason, Whitfield, Bryson Law Firm, 5101 Wisconsin Avenue, NW – Suite 305, Washington, DC 20016, filed claims asserted in the Lawsuit pursuant to the FLSA and AMWA on behalf of themselves and other persons who either currently or formerly work/worked for the Defendants;

WHEREAS, the Parties agree that there are bona fide disputes between them with respect to (a) the legal entitlement to the amounts claimed in the Lawsuit; and (b) the facts that are the basis for the allegations made in the Lawsuit;

WHEREAS, the Defendants deny that they have committed any wrongdoing or violated any state or federal law pertaining to the payment of wages and has defended the claims asserted in the Lawsuit;

WHEREAS, the Parties, in view of the costs, risks, and delays of continued litigation and appeals balanced against the benefits of settlement believe that the settlement as provided in this Agreement is in each of their best interests, and counsel for Plaintiffs specifically and separately agree that the settlement as provided in this Agreement is in the best interests of the Plaintiffs and is a fair, reasonable, and adequate resolution of the Lawsuit;

WHEREAS, the Parties desire and intend to seek Court approval of the settlement of the Lawsuit as set forth in Section 1 of this Agreement and to seek an entry of final dismissal from the Court, dismissing with prejudice the claims of the Plaintiffs as set forth herein;

NOW, THEREFORE, in consideration of the covenants and mutual promises and agreements herein contained, and other valuable consideration, the sufficiency of which is

hereby acknowledged, the Parties agree to terminate past, present, and potential controversies between the Parties to the extent stated in greater detail below, and covenant and agree as follows:

1. Approval of Settlement: All terms of this Agreement are contingent upon the approval of the Court, and this Agreement is entered into voluntarily by the Parties for settlement purposes only.

a. The Parties agree to cooperate and present to the Court, if necessary, for its consideration in connection with the approval of the Agreement competent evidence as may be requested by the Court subject to the appropriate standards for approving a settlement under the FLSA.

b. The Parties and their counsel will, contemporaneously with their execution of this Agreement, execute a Joint Motion for Final Approval of Settlement to be filed with the Court, seeking final approval of their proposed settlement, as set forth in this Agreement.

2. Settlement Approval Procedure: This Agreement will become final and effective upon occurrence of all of the following events:

a. Entry of an Order by the Court granting approval of this settlement;

b. Execution of this Agreement by the Named Plaintiffs, the Defendants, and their respective counsel of record;

c. Entry of an Order dismissing the case with prejudice;

d. The Defendants shall tender to the Settlement Fund the \$2,100,000 in 18 monthly equal installments of \$116,666.67 payable on the last calendar day of each month commencing on the last day of the first month following an Order approving this settlement which will cover the payments specified in Section 4.

3. Effect of Non-Approval: In the event that any of the conditions specified in this Agreement are not satisfied, or in the event that this Agreement does not obtain approval of the Court for any reason, all matters covered by the Agreement, shall, for all purposes, be null and void. In such event, nothing in this Agreement shall be used or construed by or against any Party as a determination, admission, or concession of any issue of law or fact in the Lawsuit and the Parties do not waive, and instead expressly reserve their respective and all rights with respect to the prosecution and defense of the Lawsuit as if the Agreement never existed. If voided, the Parties further agree to extend any necessary deadlines in the Lawsuit, or where necessary, request the Court to do so.

4. Settlement Sum and Allocation: The Plaintiffs and their counsel will have the right to, as consideration for the settlement of this Lawsuit, **TWO MILLION ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS (\$2,100,000)** (the “**Settlement Payment**”). The Settlement Payment shall be divided as follows:

- a. Attorneys' Fees: \$700,000;
- b. Costs and Expenses: \$ 120,129.88;
- c. Administration: \$12,055;
- d. Named Plaintiff Kirk Nelson: \$10,000;
- e. Named Plaintiff John Evans: \$10,000;
- f. Opt-in Plaintiffs who provided deposition: \$2,000 each;
- g. The remaining \$1,215,815.12 will be divided among all Plaintiffs according to settlement payment amounts provided by Plaintiffs' Counsel to the Settlement Administrator as described in Section 6 of this agreement.

5. Release.

a. Mutual General Release by Named Plaintiffs Only: In exchange for the considerations recited in Section 4 of this Agreement, the Named Plaintiffs and Defendants do hereby and forever mutually release, acquit, and discharge each other, which includes their attorneys and past, present, and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, and privies from any and all claims, causes of action, demands, debts, obligations, damages, or liability of any nature whatsoever, known or unknown, that were alleged, could have been alleged, may be based in whole or in part upon, do or may arise out of, or are or may be related to or in any way connected with the services he provided to Defendants as well as the claims or the facts, matters, transactions, or occurrences referred to in the lawsuit captioned, *Kirk Nelson, Individually and on behalf Others Similarly Situated v. Sabre Companies LLC and Sabre Energy Services LLC*, No. 1:15-cv-00314, filed in the Northern District of New York and any other claims under the FLSA, under the AMWA, and all other local, state, or federal laws relating to wage and hour compensation up to the execution of this Agreement, including, but not limited to, alleged claims of unpaid wages and all derivative claims under the Employee Retirement and Income Security Act, 29 U.S.C. §§ 201, et. seq. arising or accruing prior to September 4, 2018. All such claims, if any and including any and all claims for attorneys' fees, costs, expenses and the like, are hereby compromised, settled, and extinguished in their entirety.

b. Release As To All Opt-in Plaintiffs: In exchange for the considerations recited in Section 4 of this Agreement, each Opt-in Plaintiff who filed a consent form in this case does hereby and forever release, acquit, and discharge the Defendants, which includes its attorneys and past, present, and future divisions, affiliates, predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, and privies from any and all wage and

hour claims, causes of actions, demands, debts, obligations, damages or liability, known or unknown, which concern or relate in any way to the payment of wages or bonuses or any other form of compensation under the FLSA, AMWA, or any other federal, state or local wage-and-hour law and any and all claims for retaliation under the FLSA or state wage-and-hour statutes, whether those claims exist, or allegedly exist, at law or in equity under the common law, contract law, statutory law, the Fair Labor Standards Act, 29 U.S.C. §§201, et seq., and state wage laws, as well as any and all derivative claims under the Employee Retirement Income Security Act, 29 U.S.C. §§201, et seq. arising or accruing prior to September 4, 2018. The released claims are intended to include any and all claims that were raised in the Lawsuit, and any and all claims for attorneys' fees, costs, and expenses and the like, including but not limited to, any claims for attorneys' fees related to services rendered by the Plaintiffs' counsel of record in the Action and/or any other counsel who has provided services to the Plaintiffs.

6. Settlement Administration: A Settlement Fund will be established with a Settlement Administrator selected by Plaintiffs who will be responsible for: researching and updating addresses through skip-traces and similar means; reporting on the status of the administration of the Settlement to the Parties; resolving any settlement payment dispute, in concert with the counsel for the Parties; providing the Parties with all necessary data; setting up, administering and making payments from the settlement fund; distributing settlement payments and withholding therefrom the Opt-in Plaintiffs' share of payroll taxes and remitting such funds to the appropriate taxing authorities, along with any associated tax reporting, return and filing requirements, and performing such additional duties as the Parties may mutually direct. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out. The administration costs will be paid from the Settlement Payment Amount, and shall include all costs necessary to administer the Settlement. The actions of the settlement administrator shall be governed by the terms of the Settlement Agreement. Defendants will provide Class Counsel and the settlement administrator with, as to each Opt-in Plaintiff: 1) name; 2) last known home address; 3) last known personal email address; 4) social security number; and 5) last known telephone number. Plaintiffs' Counsel will provide to the Settlement Administrator the settlement payment for each Opt-in Plaintiff.

The total administrative costs of the Settlement Administrator, including payment for all services and mailings, shall be paid from the Gross Settlement Amount. The Administrator shall: (a) set up and administer a qualified settlement fund to disburse settlement payments ("Settlement Fund"); (b) distribute all settlement checks; (c) address questions from Settlement Plaintiffs; (d) prepare and mail all necessary IRS W-2 and 1099 forms; (e) calculate the employer's share of payroll taxes to the appropriate federal, state and local taxing authorities; (f) collect and timely remit withholdings and the employer's share of payroll taxes to the appropriate federal, state and local taxing authorities; and (g) perform any other duties necessary to effectuate the Agreement.

7. Settlement Payment Procedure and Individual Release:

- a. Defendants shall deposit the \$2,100,000 in 18 monthly equal installments of \$116,666.67 payable on the last calendar day of each month commencing on the last day of the first month following an Order approving this settlement. Upon deposit, the Settlement Administrator shall be immediately authorized to distribute the amount based on a method to be determined by Plaintiffs' Counsel. Defendants' consent to the allocation method shall not be unreasonably withheld. The computation of the payments to Collective Action Members will be based on data provided by Defendants. Defendants represent and warrant that to the best of its knowledge and belief, the data supplied accurately reflects the dates of employment and compensation paid to the Collective Action Members. The distribution method shall be subject to the following limitations. The Settlement Administrator shall distribute settlement award checks to all Opt-in Plaintiffs with a release on the back of the check. The release will state: "Receipt of this check is a full and final release." If an Opt-in Plaintiff does not negotiate their check within 180 days of mailing, the amount shall remain in the Settlement Fund for discretionary use by the Parties for the next 90 days, including to pay individuals who are not part of the settlement but who have made allegations of the same kind as those that the settlement claimants have. After the 90 days has passed, all amounts remaining in the Settlement Fund will revert back to Defendants.
- b. For avoidance of doubt, upon the court approval of this settlement, there is a full and final settlement of all claims referenced in Section 5 of this Agreement for all Plaintiffs (Named and Opt-in Plaintiffs) regardless of whether or not a plaintiff cashes his settlement check or signs any of the other settlement documentation.

8. Tax Issues and Indemnification:

For income and payroll tax purposes, the Parties agree that 50% of each Collective Action Member's settlement payment shall be allocated as wages (which shall be subject to required withholdings and deductions and reported as wage income as required by law), and the remaining 50% of each settlement payment shall be allocated as penalties, interest and other non-wage recovery (which shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law). Other than the withholding and reporting requirements herein, Collective Action Members shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received under this Settlement. Defendants will be responsible for the employer's share of payroll taxes. The settlement administrator will provide an IRS Form 1099 for the service payments.

Each Plaintiff releases the Defendants from, and agrees to assume full responsibility to, any federal, state or local taxing authorities for any tax consequences of the Defendants under this Agreement except for proper withholding and payment of employment taxes. **EACH PLAINTIFF COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS**

THE DEFENDANTS FROM AND AGAINST ANY TAXES, FINES, PENALTIES, INTEREST, SUITS, CLAIMS, DEMANDS, LIENS, PROCEEDINGS, AND ANY OTHER LIABILITY ARISING OUT OF SUCH TAX CONSEQUENCES. Each Plaintiff acknowledges and agrees that the Defendants and its legal counsel have made no representations regarding the proper tax treatment of the payments set forth in Sections 4 and 7 of this Agreement.

9. Terms of Settlement and Representation by Counsel: As a result of the arm's-length negotiations, a settlement of the issues raised in this action was reached as memorialized herein in this Agreement. All of the Parties acknowledge that they have been appropriately and adequately represented by counsel throughout all negotiations which preceded the execution of this Agreement and that this Agreement has been executed with the consent and the advice of such counsel.

10. Nonadmission: The Parties acknowledge and agree that liability for the actions which are the subject matter of this Agreement is disputed by the Parties. The Parties agree that this Agreement represents a fair and reasonable settlement of this bona fide dispute as to the facts and the law that apply to this matter. This Agreement and the settlement are a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Parties to this Agreement. The Parties further acknowledge and agree that this Agreement, the settlement, and any part of the negotiations shall not be used to suggest an admission of liability in any dispute the Parties may have now or in the future with respect to any person or entity.

11. Modification of Agreement: This agreement must be approved in its entirety and without modifications to be effective. This Agreement may not be modified or amended except in writing, signed by the respective counsel of record for the Parties.

12. Further Cooperation: The Parties and their respective counsel shall proceed diligently to prepare and execute all documents, to seek the necessary Court approval(s), and to do all things reasonably necessary or convenient to consummate the Agreement and settlement as expeditiously as possible.

13. Entire Agreement: This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, oral or written, relating to the subject matter of this Agreement. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other oral or written representations or terms. This Agreement shall not be modified, amended or terminated unless such modification, amendment or termination is executed as required by Section 11 above.

14. Construction: This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any Party, regardless of who drafted or who was principally responsible for drafting this Agreement, or any specific term or condition thereof. The Plaintiffs and the Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither the Plaintiffs nor the Defendants may claim that any ambiguity in this Agreement should be construed against the other.

15. Enforcement: This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of New York, both in its procedural and substantive aspects, and without regard for the principle of conflict of laws, or, in the event the choice of New York law is deemed inapplicable, in accordance with U.S. federal law. The application of the laws of the State of New York, or U.S. federal law if New York law is deemed inapplicable, shall exclude in all cases any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that may direct or would cause the application of the laws of any other state, country or jurisdiction.

16. Continuing Jurisdiction: The United States District Court for the Northern District of New York will have continuing jurisdiction to hear and adjudicate the issues of law and facts asserted in the Lawsuit until a final order of dismissal is signed by this Court.

17. Execution of Agreement: The Parties agree that this Agreement shall be executed in multiple original counterparts, each having the same force and effect as if all Parties executed a single instrument. Facsimile, Portable Document Format (pdf) or other electronic signature shall be considered valid signatures. Delivery of an executed signature page of this Agreement by facsimile, pdf or other electronic means shall be as effective as delivery of a manually executed counterpart hereof.