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Honorable \_\_\_\_\_

OCT 30 2013

BY \_\_\_\_\_  
AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON DEPUTY



13-CV-01927-JGM

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CURTIS KIRK,  
  
Plaintiff  
  
v.  
  
ALL BATTERY SALES AND SERVICE,  
  
Defendant.

CASE NO. 13-cv-1927

~~PROPOSED~~ ORDER APPROVING  
AND ENTERING CONSENT DECREE  
AND ~~PROPOSED~~ ORDER OF  
JUDGMENT AND DISMISSAL

*JLR*

AND NOW, this 30<sup>th</sup> day of October, 2013, upon consideration of the  
Complaint of Plaintiff, Curtis Kirk, and the parties' signed Stipulated Motion, and all  
other documents before it, it is hereby ORDERED that:

*JLR*

- The agreed [Proposed] Consent Decree (Exhibit 1) with its attachments, including the General Release of Claims incorporated into the Decree, is APPROVED and ENTERED as the final decree of this Court in full settlement of this action;
- Judgment is ENTERED per the terms provided in the Consent Decree; and

[PROPOSED] ORDER APPROVING AND ENTERING CONSENT DECREE  
AND [PROPOSED] ORDER OF JUDGMENT AND DISMISSAL - 1  
13-cv-1927

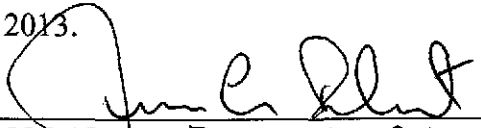
UNITED STATES ATTORNEY  
700 STEWART STREET, SUITE 5220  
SEATTLE, WASHINGTON 98101  
(206) 553-7970

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- This matter is DISMISSED with prejudice and without costs or attorneys' fees.  
The Court retains jurisdiction over this matter for purpose of enforcing the  
Consent Decree as approved therein.

APPROVED AND ENTERED BY THIS COURT

This 30<sup>th</sup> day of Oct., 2013.

  
\_\_\_\_\_  
HONORABLE James L. Robart  
United States District Judge

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**EXHIBIT 1**  
**[PROPOSED] CONSENT DECREE**

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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CURTIS KIRK,

Plaintiff

v.

ALL BATTERY SALES AND SERVICE,

Defendant.

Civil Action No. 13-cv-1927

**[PROPOSED] CONSENT DECREE**

**I. PARTIES**

1. The parties to this Consent Decree (the "Decree") are Plaintiff, Curtis Kirk ("Mr. Kirk"), and Defendant, All Battery Sales and Service and any parent companies (collectively, "ABS").

2. This Decree will be binding and enforceable against ABS (including successors in interest) for the acts and omissions of ABS' employees committed within the scope of employment and upon Mr. Kirk (including his heirs, successors, and assigns).

**II. THE SCOPE OF THE DECREE**

3. This Decree and the incorporated General Release of Claims (Attachment A) resolves all legal and equitable claims actually or potentially arising out

1 of Mr. Kirk's employment with and termination from ABS, as of the date of the signing  
2 of this Decree. In consideration for Mr. Kirk's execution of the General Release of  
3 Claims, appended and incorporated by reference to this Decree as Attachment A, and for  
4 Mr. Kirk's agreement to be bound to the other provisions of the Decree set forth below,  
5 ABS agrees to provide the relief and be bound by the provisions of the Decree set forth  
6 below.

### 7 **III. NON-RETALIATION**

8 4. ABS shall not take any action against any person, including but not limited  
9 to Mr. Kirk, which constitutes retaliation or interference with the exercise of such  
10 person's rights under the Uniformed Services Employment and Reemployment Rights  
11 Act of 1994 ("USERRA"), or because such person gave testimony or assistance or  
12 participated in any manner in any investigation or proceeding in connection with this  
13 case.

### 14 **IV. INDIVIDUAL RELIEF**

15 5. In full settlement of the claims raised in this case and in consideration for  
16 his execution of the General Release of Claims (Attachment A), ABS shall pay to Mr.  
17 Kirk THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$37,500.00),  
18 payable in two equal installments (of \$18,750) as follows:

19 (a) the first installment, no later than ten (10) days after approval and entry  
20 by the Court of this Decree; and

21 (b) the second installment, no later than ten (10) days of January 1, 2014  
22 (not earlier than January 1, 2014 and no later than January 10, 2014); further

23 (c) ABS shall make appropriate employer-based income tax withholdings  
24 and other statutory deductions. ABS shall pay the employer portion of any social  
25 security tax on the back pay portion of the amount separately and shall not deduct its  
26 portion of such tax from the amount paid to Mr. Kirk. Mr. Kirk shall be responsible for  
27 paying any income taxes he may owe on amounts paid to him by ABS;

1 (d) ABS shall pay the required amounts by mailing to Mr. Kirk the checks,  
2 sent by overnight mail delivery service requiring a signature upon receipt, addressed as  
3 follows:

4 Curtis Kirk  
5 c/o J. Michael Diaz, AUSA  
6 United States Attorney's Office  
7 700 Stewart Street, Suite 5220  
8 Seattle, WA 98101; and

9 (e) ABS shall timely issue to Mr. Kirk the appropriate Internal Revenue  
10 Service tax forms reflecting the amounts paid to Mr. Kirk and the amounts withheld by  
11 ABS, including issuing to Mr. Kirk a W-2 wage and tax statement.

12 6. Mr. Kirk shall refer all potential future employers/references/inquiries to  
13 ABS' Head of Human Resources. Upon inquiry about Mr. Kirk's employment with or  
14 leaving of ABS, ABS' Head of Human Resources shall state only Mr. Kirk's dates of  
15 employment, positions (namely "hourly front desk, hot shot driver and rotate bench"  
16 employee), and compensation history. ABS' Head of Human Resources shall make no  
17 other statements about Mr. Kirk to a prospective employer/reference/inquirer unless  
18 required by law, other than to state that "company policy allows them only to verify the  
19 information that is listed above." Further, ABS will segregate (in a separate file located  
20 in the ABS' Head of Human Resources' office entitled "Kirk Litigation File") the  
21 employee warnings/notices and termination records from his personnel file. Finally,  
22 ABS will not disclose Mr. Kirk's personnel file without his express consent, unless  
23 required by law.

#### 24 V. TRAINING/RETRAINING REQUIREMENTS

25 7. No later than ninety (90) calendar days after the Court's approval and entry  
26 of this Decree, ABS shall require the following individuals to undergo USERRA training:

- 27 a. All Managers within ABS;
- 28 b. Vern Allen, Co-Owner;
- c. Thomas Allen, Co-Owner;

- 1 d. Chuck Allen, General Manager;  
2 e. Marietta Snyder, Deputy General Manager or her successor; and  
3 f. Head of Human Resources.  
4 (collectively, the "Trainees").

5 8. The training will consist of requiring the Trainees to view in one of two  
6 group sessions a United States Office of Personnel Management's USERRA training  
7 video located at the following URL: <http://www.opm.gov/mediacenter/videos/OPM>  
8 [Media Center/USERRA Training Webcast.aspx](http://www.opm.gov/mediacenter/videos/OPM).

9 9. The Trainees will observe this training video in one of two sessions, in the  
10 same room, on a set date, and at a set time. Chuck Allen, General Manager for ABS, will  
11 introduce the video and state as follows: "The following training video relates to  
12 employer and employee rights and obligations under the Uniformed Services  
13 Employment and Reemployment Rights Act, or USERRA. USERRA generally protects  
14 members of the uniformed, military services who also work outside of the military. The  
15 company takes its obligations under USERRA seriously, and it is important that you give  
16 your full attention to this presentation. If you have any questions about this material,  
17 please speak with me."

18 10. All Trainees will sign a form acknowledging their attendance at the training  
19 for the full length of the video.

20 11. To reinforce the training described above, ABS agrees to post information  
21 about USERRA in its workplace. Specifically, within thirty (30) calendar days after the  
22 date of this Agreement, ABS will display the "USERRA Rights Notice" Poster issued by  
23 the United States Department of Labor (appended as Attachment B to this Decree) in all  
24 places where other non-discrimination notices are posted, including but not limited to  
25 breakrooms and other common areas.

1 | **VI. MISCELLANEOUS**

2 | 12. The undersigned representatives of ABS certify that they are fully  
3 | authorized to enter into the terms and conditions of this Decree and to execute and legally  
4 | bind ABS.

5 | 13. This Decree will be binding and enforceable against ABS (including  
6 | successors in interest) for the acts and omissions of ABS' employees committed within  
7 | the scope of employment and upon Mr. Kirk (including his heirs, successors, and  
8 | assigns).

9 | 14. This Decree may be signed in counterparts, and its validity shall not be  
10 | challenged on that basis. All such counterparts, together, shall be deemed to be one  
11 | document and a photocopy of this Decree and any signature page thereto is as valid as the  
12 | original. This Decree constitutes the entire agreement and commitments of the parties.  
13 | Any modifications to this Decree must be mutually agreed upon and memorialized in a  
14 | writing by all parties.

15 | 15. Each party shall bear their own costs and expenses of litigation, including  
16 | attorneys' fees.

17 | **VII. RETENTION OF JURISDICTION, DISPUTE RESOLUTION AND**  
18 | **COMPLIANCE**

19 | 16. This Court retains jurisdiction over this matter for the purpose of entering  
20 | appropriate orders enforcing this Decree.

21 | 17. The effective date of this Decree shall be the date upon which it is entered  
22 | by the Court.

23 | 18. The parties shall engage in good faith efforts to resolve any dispute  
24 | concerning compliance with this Decree. In the event of a dispute, the parties shall give  
25 | notice to each other fourteen (14) days before seeking resolution of the dispute by the  
26 | Court, and may conduct expedited discovery under the Federal Rules of Civil Procedure  
27 | for the purpose of determining compliance with the terms of the Decree.  
28 |



1           19.    The terms of this Decree shall expire without further action from the Court  
2 one (1) year from the date of entry of the Decree and judgment dismissing this lawsuit.  
3 The parties agree, however, that the terms of the General Release of Claims (Attachment  
4 A) and ABS' obligations under Paragraphs 6 and 11, do not expire, but rather shall  
5 survive the expiration of the other terms of the Decree.

6           20.    Either party may move the Court to extend the expiration date of the Decree  
7 for good cause shown.

8           Dated this 28th day of October 2013.

9 By:

10 Respectfully submitted,

11 JENNY A. DURKAN  
12 United States Attorney

BETTS, PATTERSON, & MINES, P.S.

13 /s/ J. Michael Diaz  
14 J. MICHAEL DIAZ, WSBA # 38100  
15 Assistant United States Attorney  
16 700 Stewart Street, Suite 5220  
17 Seattle, Washington 98101  
18 Phone: 206-553-7970  
19 Fax: 206-553-4067  
20 E-mail: [Michael.Diaz@usdoj.gov](mailto:Michael.Diaz@usdoj.gov)

/s/ Steve Goldstein  
STEVE GOLDSTEIN, WSBA 11042  
701 Pike Street, Suite 1400  
Seattle, WA 98101  
Phone: 206-268-8681  
Fax: 206-343-7053  
E-mail: [sgoldstein@bpmlaw.com](mailto:sgoldstein@bpmlaw.com)

21 Attorneys for Curtis Kirk

Attorneys for ABS

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**ATTACHMENT A  
TO THE  
CONSENT DECREE**

### GENERAL RELEASE OF CLAIMS

All Battery Sales and Services, Inc., ("the Company") and Curtis Kirk, his spouse or domestic partner (if any), executors, administrators, successors and assigns (collectively referred to throughout this General Release as "Employee"), agree that:

1. **Last Day of Employment.** Employee's last day of employment with the Company was January 20, 2012.

2. **Consideration.** The consideration for signing this General Release ("Release") and the respective obligations of the Company and Employee are set forth in the Consent Decree ("Decree") (to which this release is appended) submitted to the United States District Court for the Western District of Washington for approval and entry.

3. **No Consideration Absent Execution of this Agreement.** Employee understands and agrees that Employee would not receive the monies and/or benefits specified in the Decree referenced in Paragraph "5" above, except for Employee's execution of this Release.

4. **General Release of All Claims.** Employee knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, the Company, its parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, the employee benefit plans for the Company, plan fiduciaries and plan administrators (whether internal or external), both individually and in their official capacities (collectively referred to throughout the remainder of this Release as "Releasees") of and from any and all claims, known and unknown, asserted or unasserted, which Employee has or may have against Releasees as of the date of execution of this Release and, including, but not limited to, any alleged violation of or liability for any of the following:

- The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA");
- Title 73 RCW;
- Title VII of the Civil Rights Act of 1964, as amended;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974 ("ERISA") (except for any vested benefits under any tax qualified benefit plan), as amended;
- The Immigration Reform and Control Act, as amended;
- The Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination in Employment Act of 1967 ("ADEA"), as amended;
- The Workers Adjustment and Retraining Notification Act, as amended;
- The Occupational Safety and Health Act, as amended;
- The Sarbanes-Oxley Act of 2002;
- The National Labor Relations Act, to the extent permitted by law;
- The Family and Medical Leave Act, as amended, to the extent permitted by law;
- The Equal Pay Act, as amended, to the extent permitted by law;
- The Consolidated Omnibus Budget Reconciliation Act ("COBRA"), to the extent permitted by law;

\_\_\_\_ [Company Initial]

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CK [Employee Initial]

- Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff *et seq.*;
- The federal Fair Credit Reporting Act;
- The Washington Fair Credit Reporting Act;
- The Washington Consumer Protection Act, Chapter 19.86 RCW;
- The Washington Law Against Discrimination, as amended, Chapter RCW 49.60;
- The Washington Minimum Wage Act, as amended, Chapter 49.46 RCW;
- The Washington Family Leave Act, as amended, Chapter 49.78 RCW;
- The Washington Family Care Act, as amended, RCW 49.12.265 - .295;
- Washington's Domestic Violence Leave Law, Chapter 49.76 RCW;
- Washington's Military Family Leave Law, Chapter 49.77 RCW;
- Washington Equal Pay Act, RCW 49.12.175;
- Any provision of Title 49 of the Revised Code of Washington;
- Any provision of Title 296 of the Washington Administrative Code;
- The Industrial Insurance Act of Washington, Chapter 49.12 RCW, as amended, to the extent permitted by law;
- Any claim alleging the exception to the Industrial Insurance Act of Washington, established by RCW 51.24.020, for injury inflicted with "deliberate intention";
- Any claim based on federal, state or local law, rule, regulation or ordinance;
- Any claim for breach of contract or promise, express or implied;
- Any claim for breach of any term or condition of an employee handbook or policy manual, including any claim for breach of any promise of specific treatment in specific situations;
- Any common law claim of any kind; and
- Any basis for recovering costs, fees or other expenses, including attorneys' fees incurred in these matters.

If any claim is not subject to release, to the extent permitted by law, Employee waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Employer or any other Releasees identified in this Release is a party.

**5. Affirmations.**

- a. Employee affirms that he is not eligible for benefits under Medicare.
- b. Employee affirms that Employee has not filed, caused to be filed or presently is a party to any claim, complaint or action against the Company.
- c. Employee further affirms that Employee has reported all hours worked as of the date of this release and has been paid and/or has received all leaves (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits to which Employee may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to Employee, except as provided in this Release.
- d. Employee further affirms that Employee has no known workplace injuries or occupational diseases.

\_\_\_\_ [Company Initial]

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CIK [Employee Initial]

e. Employee further affirms that Employee has been provided and/or has not been denied any leave requested under federal or state law.

f. Employee shall not apply in the future for employment with the Company, because of, among other things, irreconcilable differences with Company.

g. Employee further affirms that Employee has not been retaliated against for reporting any allegations of wrongdoing by the Company or its officers, including any allegations of corporate fraud, except that Employee does not disavow or otherwise retract the allegations made with the Department of Labor and which have been resolved to the satisfaction of all parties through the execution of the Decree and this Release. Both parties acknowledge that this Release does not limit either party's right, where applicable, to file or participate in an investigative proceeding of any federal, state or local governmental agency. To the extent permitted by law, Employee agrees that if such an administrative claim is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies.

h. Employee affirms that Employee has returned all of the Company's property, documents and/or any confidential information in Employee's possession or control. Employee also affirms that Employee is in possession of all of Employee's property that Employee had at Company's premises and that the Company is not in possession of any of Employee's property.

6. **Taxation.** Defendants will make appropriate employer-based income tax withholdings and other statutory deductions. Defendants shall pay the employer portion of any social security tax on the back pay portion of the amount separately and shall not deduct its portion of such tax from the amount paid to Mr. Axtell. Mr. Axtell shall be responsible for paying any income taxes he may owe on amounts paid to him by Defendants. Releasees make no representation as to the taxability of the amounts paid to Employee.

7. **Non-admission of Wrongdoing.** The Parties agree that neither this Release nor the furnishing of the consideration for this Release that is embodied in the Decree shall be deemed or construed at any time for any purpose as an admission by Releasees of any liability or unlawful conduct of any kind and Releasees expressly deny any liability.

8. **Entire Agreement.** This Release and the Decree to which it is appended set forth the entire agreement between the parties hereto and fully supersedes any prior agreements or understandings between the parties. Employee acknowledges that Employee has not relied on any representations, promises, or agreements of any kind made to Employee in connection with Employee's decision to accept this Release or the Decree.

9. **Medicare Information.** Pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, The Center for Medicare and Medicaid Services must be provided the releasor's full address, Social Security Number, date of birth, gender, and, if available, their Medicare Health Insurance Claim Number (HICN.) Provision of this information is a condition of this settlement. Spaces are provided at the end of this Release for compliance.

10. **Liens - Indemnity and Hold Harmless.** It is expressly understood and agreed, Claimant further covenants and agrees that any and all Medicare, Social Security, hospital,

\_\_\_\_ [Company Initial]

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CIK [Employee Initial]

medical insurance coverage subrogation claims and/or any and all other type of liens or interest that is and/or could be claimed by any person and/or entity, will be fully paid, satisfied and released from the settlement proceeds paid herein, in trust, unless and until such time as said liens and/or claims have been fully paid, satisfied or released.

In this regard, Claimant agrees to indemnify and hold harmless the Released Parties, their insurance carriers, their attorneys and all others in privity with them, from any claim by, through and/or under Claimant including, but not limited to, any direct claim by Medicare and/or Social Security for reimbursement of any funds paid by them relating to the injuries and claims arising from the accident in question.

**11. Medicare Set Aside.** It is further expressly understood and agreed, to the extent applicable, Claimant covenants that Claimant will set aside funds necessary in any approved Medicare Set Aside Account, to pay for any anticipated future medical and/or health care needs of Claimant, for any condition that requires treatment that arises from the incident in question. In the alternative, Claimant shall covenant that they do not presently anticipate that Claimant will require medical and/or health care treatment for conditions related and/or arising from the incident in question. Further, should funds not be placed in an approved Medicare Set Aside Account for Claimant, and care and treatment for conditions reasonably related to the incident is subsequently sought, then Claimant covenants and represents to the Released Parties, their insurance carriers, their attorney and others in privity with them, that Claimant will not submit nor seek payment for said medical care from Medicare and/or any other government funded program. This covenant and representation shall be included as part of the indemnification obligations of Claimant stated herein.

The parties knowingly and voluntarily sign this Release as of the date(s) set forth below:

**EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST RELEASEES.**

FOR ALL BATTERY SALES AND SERVICE, INC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chuck Allen, General Manager

\_\_\_\_ [Company Initial]

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CAK [Employee Initial]

### GENERAL RELEASE OF CLAIMS

All Battery Sales and Services, Inc., ("the Company") and Curtis Kirk, his spouse or domestic partner (if any), executors, administrators, successors and assigns (collectively referred to throughout this General Release as "Employee"), agree that:

1. **Last Day of Employment.** Employee's last day of employment with the Company was January 20, 2012.

2. **Consideration.** The consideration for signing this General Release ("Release") and the respective obligations of the Company and Employee are set forth in the Consent Decree ("Decree") (to which this release is appended) submitted to the United States District Court for the Western District of Washington for approval and entry.

3. **No Consideration Absent Execution of this Agreement.** Employee understands and agrees that Employee would not receive the monies and/or benefits specified in the Decree referenced in Paragraph "5" above, except for Employee's execution of this Release.

4. **General Release of All Claims.** Employee knowingly and voluntarily releases and forever discharges, to the full extent permitted by law, the Company, its parent corporation, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, and their current and former employees, attorneys, officers, directors and agents thereof, the employee benefit plans for the Company, plan fiduciaries and plan administrators (whether internal or external), both individually and in their official capacities (collectively referred to throughout the remainder of this Release as "Releasees") of and from any and all claims, known and unknown, asserted or unasserted, which Employee has or may have against Releasees as of the date of execution of this Release and, including, but not limited to, any alleged violation of or liability for any of the following:

- The Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA");
- Title 73 RCW;
- Title VII of the Civil Rights Act of 1964, as amended;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974 ("ERISA") (except for any vested benefits under any tax qualified benefit plan), as amended;
- The Immigration Reform and Control Act, as amended;
- The Americans with Disabilities Act of 1990, as amended;
- The Age Discrimination in Employment Act of 1967 ("ADEA"), as amended;
- The Workers Adjustment and Retraining Notification Act, as amended;
- The Occupational Safety and Health Act, as amended;
- The Sarbanes-Oxley Act of 2002;
- The National Labor Relations Act, to the extent permitted by law;
- The Family and Medical Leave Act, as amended, to the extent permitted by law;
- The Equal Pay Act, as amended, to the extent permitted by law;
- The Consolidated Omnibus Budget Reconciliation Act ("COBRA"), to the extent permitted by law;

CA \_\_\_\_\_ [Company Initial]

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\_\_\_\_\_ [Employee Initial]

- Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff *et seq.*;
- The federal Fair Credit Reporting Act;
- The Washington Fair Credit Reporting Act;
- The Washington Consumer Protection Act, Chapter 19.86 RCW;
- The Washington Law Against Discrimination, as amended, Chapter RCW 49.60;
- The Washington Minimum Wage Act, as amended, Chapter 49.46 RCW;
- The Washington Family Leave Act, as amended, Chapter 49.78 RCW;
- The Washington Family Care Act, as amended, RCW 49.12.265 - .295;
- Washington's Domestic Violence Leave Law, Chapter 49.76 RCW;
- Washington's Military Family Leave Law, Chapter 49.77 RCW;
- Washington Equal Pay Act, RCW 49.12.175;
- Any provision of Title 49 of the Revised Code of Washington;
- Any provision of Title 296 of the Washington Administrative Code;
- The Industrial Insurance Act of Washington, Chapter 49.12 RCW, as amended, to the extent permitted by law;
- Any claim alleging the exception to the Industrial Insurance Act of Washington, established by RCW 51.24.020, for injury inflicted with "deliberate intention";
- Any claim based on federal, state or local law, rule, regulation or ordinance;
- Any claim for breach of contract or promise, express or implied;
- Any claim for breach of any term or condition of an employee handbook or policy manual, including any claim for breach of any promise of specific treatment in specific situations;
- Any common law claim of any kind; and
- Any basis for recovering costs, fees or other expenses, including attorneys' fees incurred in these matters.

If any claim is not subject to release, to the extent permitted by law, Employee waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which Employer or any other Releasees identified in this Release is a party.

**5. Affirmations.**

- a. Employee affirms that he is not eligible for benefits under Medicare.
- b. Employee affirms that Employee has not filed, caused to be filed or presently is a party to any claim, complaint or action against the Company.
- c. Employee further affirms that Employee has reported all hours worked as of the date of this release and has been paid and/or has received all leaves (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits to which Employee may be entitled and that no other leave (paid or unpaid), compensation, wages, bonuses, commissions and/or benefits are due to Employee, except as provided in this Release.
- d. Employee further affirms that Employee has no known workplace injuries or occupational diseases.

CA [Company Initial]

\_\_\_\_\_ [Employee Initial]



e. Employee further affirms that Employee has been provided and/or has not been denied any leave requested under federal or state law.

f. Employee shall not apply in the future for employment with the Company, because of, among other things, irreconcilable differences with Company.

g. Employee further affirms that Employee has not been retaliated against for reporting any allegations of wrongdoing by the Company or its officers, including any allegations of corporate fraud, except that Employee does not disavow or otherwise retract the allegations made with the Department of Labor and which have been resolved to the satisfaction of all parties through the execution of the Decree and this Release. Both parties acknowledge that this Release does not limit either party's right, where applicable, to file or participate in an investigative proceeding of any federal, state or local governmental agency. To the extent permitted by law, Employee agrees that if such an administrative claim is made, Employee shall not be entitled to recover any individual monetary relief or other individual remedies.

h. Employee affirms that Employee has returned all of the Company's property, documents and/or any confidential information in Employee's possession or control. Employee also affirms that Employee is in possession of all of Employee's property that Employee had at Company's premises and that the Company is not in possession of any of Employee's property.

**6. Taxation.** Defendants will make appropriate employer-based income tax withholdings and other statutory deductions. Defendants shall pay the employer portion of any social security tax on the back pay portion of the amount separately and shall not deduct its portion of such tax from the amount paid to Mr. Axtell. Mr. Axtell shall be responsible for paying any income taxes he may owe on amounts paid to him by Defendants. Releasees make no representation as to the taxability of the amounts paid to Employee.

**7. Non-admission of Wrongdoing.** The Parties agree that neither this Release nor the furnishing of the consideration for this Release that is embodied in the Decree shall be deemed or construed at any time for any purpose as an admission by Releasees of any liability or unlawful conduct of any kind and Releasees expressly deny any liability.

**8. Entire Agreement.** This Release and the Decree to which it is appended set forth the entire agreement between the parties hereto and fully supersedes any prior agreements or understandings between the parties. Employee acknowledges that Employee has not relied on any representations, promises, or agreements of any kind made to Employee in connection with Employee's decision to accept this Release or the Decree.

**9. Medicare Information.** Pursuant to Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, The Center for Medicare and Medicaid Services must be provided the releasor's full address, Social Security Number, date of birth, gender, and, if available, their Medicare Health Insurance Claim Number (HICN.) Provision of this information is a condition of this settlement. Spaces are provided at the end of this Release for compliance.

**10. Liens - Indemnity and Hold Harmless.** It is expressly understood and agreed, Claimant further covenants and agrees that any and all Medicare, Social Security, hospital,

CA [Company Initial]

\_\_\_\_\_ [Employee Initial]

medical insurance coverage subrogation claims and/or any and all other type of liens or interest that is and/or could be claimed by any person and/or entity, will be fully paid, satisfied and released from the settlement proceeds paid herein, in trust, unless and until such time as said liens and/or claims have been fully paid, satisfied or released.

In this regard, Claimant agrees to indemnify and hold harmless the Released Parties, their insurance carriers, their attorneys and all others in privity with them, from any claim by, through and/or under Claimant including, but not limited to, any direct claim by Medicare and/or Social Security for reimbursement of any funds paid by them relating to the injuries and claims arising from the accident in question.


**11. Medicare Set Aside.** It is further expressly understood and agreed, to the extent applicable, Claimant covenants that Claimant will set aside funds necessary in any approved Medicare Set Aside Account, to pay for any anticipated future medical and/or health care needs of Claimant, for any condition that requires treatment that arises from the incident in question. In the alternative, Claimant shall covenant that they do not presently anticipate that Claimant will require medical and/or health care treatment for conditions related and/or arising from the incident in question. Further, should funds not be placed in an approved Medicare Set Aside Account for Claimant, and care and treatment for conditions reasonably related to the incident is subsequently sought, then Claimant covenants and represents to the Released Parties, their insurance carriers, their attorney and others in privity with them, that Claimant will not submit nor seek payment for said medical care from Medicare and/or any other government funded program. This covenant and representation shall be included as part of the indemnification obligations of Claimant stated herein.

The parties knowingly and voluntarily sign this Release as of the date(s) set forth below:

**EMPLOYEE FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS GENERAL RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS EMPLOYEE HAS OR MIGHT HAVE AGAINST RELEASEES.**

FOR ALL BATTERY SALES AND SERVICE, INC

Date: 10/23/13

By:   
Chuck Allen, General Manager

 [Company Initial]

\_\_\_\_ [Employee Initial]

FOR PLAINTIFF, CURTIS KIRK.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Curtis Kirk

It is understood and agreed that the information provided below will be provided to The Centers for Medicare and Medicaid Services pursuant to The Medicare, Medicaid and SCHIP Extension Act of 2007.

Full Name as it appears on your  
Social Security Card

Social Security Number

\_\_\_\_\_  
Curtis Kirk

\_\_\_\_\_

CA [Company Initial]

\_\_\_\_\_ [Employee Initial]

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**ATTACHMENT B  
TO THE  
CONSENT DECREE**



# YOUR RIGHTS UNDER USERRA

## THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

**USERRA protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service or certain types of service in the National Disaster Medical System. USERRA also prohibits employers from discriminating against past and present members of the uniformed services, and applicants to the uniformed services.**

### REEMPLOYMENT RIGHTS

You have the right to be reemployed in your civilian job if you leave that job to perform service in the uniformed service and:

- ☆ you ensure that your employer receives advance written or verbal notice of your service;
- ☆ you have five years or less of cumulative service in the uniformed services while with that particular employer;
- ☆ you return to work or apply for reemployment in a timely manner after conclusion of service; and
- ☆ you have not been separated from service with a disqualifying discharge or under other than honorable conditions.

If you are eligible to be reemployed, you must be restored to the job and benefits you would have attained if you had not been absent due to military service or, in some cases, a comparable job.

### RIGHT TO BE FREE FROM DISCRIMINATION AND RETALIATION

If you:

- ☆ are a past or present member of the uniformed service;
- ☆ have applied for membership in the uniformed service; or
- ☆ are obligated to serve in the uniformed service;

then an employer may not deny you:

- ☆ initial employment;
- ☆ reemployment;
- ☆ retention in employment;
- ☆ promotion; or
- ☆ any benefit of employment

because of this status.

In addition, an employer may not retaliate against anyone assisting in the enforcement of USERRA rights, including testifying or making a statement in connection with a proceeding under USERRA, even if that person has no service connection.

### HEALTH INSURANCE PROTECTION

- ☆ If you leave your job to perform military service, you have the right to elect to continue your existing employer-based health plan coverage for you and your dependents for up to 24 months while in the military.
- ☆ Even if you don't elect to continue coverage during your military service, you have the right to be reinstated in your employer's health plan when you are reemployed, generally without any waiting periods or exclusions (e.g., pre-existing condition exclusions) except for service-connected illnesses or injuries.

### ENFORCEMENT

- ☆ The U.S. Department of Labor, Veterans Employment and Training Service (VETS) is authorized to investigate and resolve complaints of USERRA violations.
- ☆ For assistance in filing a complaint, or for any other information on USERRA, contact VETS at **1-866-4-USA-DOL** or visit its **website at <http://www.dol.gov/vets>**. An interactive online USERRA Advisor can be viewed at **<http://www.dol.gov/elaws/userra.htm>**.
- ☆ If you file a complaint with VETS and VETS is unable to resolve it, you may request that your case be referred to the Department of Justice or the Office of Special Counsel, as applicable, for representation.
- ☆ You may also bypass the VETS process and bring a civil action against an employer for violations of USERRA.

The rights listed here may vary depending on the circumstances. The text of this notice was prepared by VETS, and may be viewed on the internet at this address: <http://www.dol.gov/vets/programs/userra/poster.htm>. Federal law requires employers to notify employees of their rights under USERRA, and employers may meet this requirement by displaying the text of this notice where they customarily place notices for employees.



**U.S. Department of Labor**  
**1-866-487-2365**



**U.S. Department of Justice**



**Office of Special Counsel**



**1-800-336-4590**

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