

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE**

Raymond Hutzler, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 3:21-cv-00304-TAV-DCP
	)	
Consolidated Nuclear Security, LLC,	)	
	)	
Defendant.	)	

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This Settlement Agreement and Release of Claims (“Agreement”) is made by and between Plaintiffs Raymond Hutzler and all other individuals who signed and filed consents to become parties in the above matter (listed in Exhibit A) as well as any successors, executors, personal representatives, heirs or any person who may claim on their behalf (“Plaintiffs”)<sup>1</sup> and Defendant Consolidated Nuclear Security, LLC (“CNS” or “Defendant”), its members and their parents, subsidiaries, affiliates, predecessors, successors, assigns, agents and their current and former directors, officers, employees and attorneys, the United States Department of Energy (DOE), the National Nuclear Security Administration (NNSA).

This Agreement is made as a compromise between Plaintiffs and Defendant for the complete and final settlement of the claims, differences, and causes of action raised by Plaintiffs in the case captioned *Raymond Hutzler, et al. v. Consolidated Nuclear Security, LLC*, Case No.

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<sup>1</sup> There are 738 Plaintiffs who signed and filed consents to be Plaintiffs. *See* ECF No. 18. Of the 738 original Plaintiffs, seven plaintiffs asked that their consents be withdrawn. *See* Garry Ferraris email to Edward Phillips dated April 17, 2023. One plaintiff (Daniel Toney) signed two consent forms one of which was mistakenly filed with the court under the name “Daniel Jones”. *See* Garry Ferraris letter to John C. Burgin Jr. dated February 24, 2023 and April 29, 2024. The parties are filing a Rule 21 motion to remove these plaintiffs from the case. *See* Exhibit A, listing all eligible Plaintiffs.

3:21-cv-00304, pending in the United States District Court of the Eastern District of Tennessee (the “Action”).

### RECITALS

The Parties recite the following procedural facts that predate this Agreement:

On August 25, 2021, Plaintiffs filed a Complaint against Defendant. Pursuant to 29 U.S.C. § 216(b), Plaintiffs alleged that Defendant failed to pay them overtime pay in violation of the Fair Labor Standards Act (“FLSA”).

On September 20, 2021, Plaintiffs filed their First Amended Complaint against Defendant.

On November 1, 2021, Defendant filed its Answer to the First Amended Complaint denying the material allegations of the First Amended Complaint and asserting certain Additional and Affirmative Defenses.

On August 1, 2022, with the Court’s permission, Plaintiffs filed their Second Amended Complaint against Defendant.

On August 15, 2022, Defendant filed its Answer to the Second Amended Complaint denying the material allegations of the Second Amended Complaint and asserting certain Additional and Affirmative Defenses.

The Parties subsequently engaged in written discovery, which included the exchange of significant payroll and time worked information by CNS. Following written discovery, the Parties established a limited discovery protocol in anticipation of mediation. A representative pool of 149 Plaintiffs were randomly selected from an agreed-upon strata of Plaintiffs based on job category and clothes-change location. From that pool, Defendant selected twenty-one (21) Plaintiffs for deposition, all of whom were deposed.

On November 8 and 9, 2023, the Parties engaged in mediation with mediator M. Reid Estes, Jr. The Parties reached an agreement to settle all claims in the Action under the terms set forth in this Agreement in order to avoid the burden, expense, and uncertainty of continuing the Action. The Parties' agreement was contingent upon the Government's approval.

On November 28, 2023, upon the Parties' joint motion, the Court stayed the case for 120 days to provide the Parties time to seek government approval of the conditional settlement agreement from the National Nuclear Security Administration (NNSA) which has been received.

After balancing the benefits of settlement with the costs, risks, and delay of continued litigation, the Parties agree that the terms of this Agreement represent a reasonable compromise of disputed issues arising from a bona fide dispute over FLSA coverage and the merits of Plaintiffs' claims and agree to represent the same to the Court. The Parties further agree that the settlement is fair, reasonable, and an adequate resolution of Plaintiffs' claims, and is in the best interests of the Plaintiffs.

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, it is hereby stipulated and agreed by and between Plaintiffs and Defendant that:

1. Defendant shall pay the total settlement amount of \$4,900,000.00 to Plaintiffs for the settlement of all claims in the Action, which includes settlement payments to all Plaintiffs and is inclusive of Plaintiffs' claims for unpaid overtime, liquidated damages, attorney fees expenses and costs, service payments, and a contingency fund to be used to administer the settlement or for any other reasonable purpose necessary to effectuate the settlement.

2. "Plaintiffs" means: All Plaintiffs who have filed consent to join forms in this case and who have not indicated to Plaintiffs' counsel that they wish their consents be withdrawn, as of November 9, 2023. (*See* Exhibit 1, listing all Plaintiffs).

3. Plaintiffs' Counsel will provide an updated allocation (if any) of the settlement amounts allocated to Plaintiffs, attorneys' fees and costs, service payments, and a contingency fund to Defendant before distributing the Notice of Settlement to Plaintiffs. Defendant shall adopt the allocation of these amounts as its individual settlement offer to each Settlement Class Member. The settlement allocations for each Plaintiff are attached as Exhibit 2.

4. Plaintiffs' Counsel shall be responsible for administering a notice of the settlement to Plaintiffs (Exhibit 3). Plaintiffs' Counsel will send a notice of the settlement to all Plaintiffs or their representative(s) within thirty-seven (37) days after NNSA approval. The notice will include the Plaintiff's individual settlement offer. Each Plaintiff or their representative(s) shall have the opportunity to accept or reject his or her individual settlement offer. To reject his or her offer, a Plaintiff must communicate the rejection in writing no later than forty-five (45) days from the date of the notice. Any Plaintiff who accepts by returning a Claim and Release Form (Exhibit 4) or who does not timely reject the individual settlement offer shall also be considered a "Settling Plaintiff."<sup>2</sup> Plaintiffs acknowledge that if they reject the proposed settlement, they will not be entitled to receive any Back Wages, Liquidated Damages or Service Awards, and will not be bound by the Release identified in paragraph 13.

5. The Parties will file a Joint Motion for Settlement Approval for approval of this Agreement with the Court within sixty (60) days of sending notice of settlement to the Plaintiffs, seeking an Order from the Court, *inter alia*: (1) approving the terms of the Parties' settlement as reflected in this Agreement; (2) providing for application of the Release set forth in paragraph 13 of this Agreement to apply to all Settling Plaintiffs; (3) retaining jurisdiction of this matter and the construction, interpretation, implementation, and enforcement of the Agreement; and (4) entry of final judgment and an order dismissing the case.

6. CNS will pay the total settlement amount of \$4,900,000.00 within thirty-one (31) days of the Court's approval of the Agreement.

7. Each Settling Plaintiff will receive their settlement payment via one or more settlement payments. One half of each Settling Plaintiff's settlement payment will be allocated as wages, and CNS will withhold federal income taxes, social security and Medicare taxes as well as other amounts from this payment as may be required by law, as may be authorized under the Collective Bargaining Agreement, or as individual plaintiffs have previously elected. CNS shall also remit the employer's share of additional Social Security, Medicare and Federal Unemployment taxes to the Internal Revenue Service (IRS). CNS shall report the wage payment and withholdings on IRS Form W-2. The other half of the settlement payment shall constitute payment for liquidated damages under the FLSA. The parties agree that payroll taxes do not need to be withheld from this amount and that CNS will issue the appropriate 1099 tax forms to each individual Plaintiff with respect to the Liquidated Damages and Service Award portions of the payments. All amounts allocated as attorneys' fees and costs will be paid to Plaintiffs' Counsel and will be reported on an IRS Form 1099. Payments to currently employed Plaintiffs will be made by ACH transfer. Payment for former employees will be provided to Plaintiffs' Counsel for distribution within forty-five days after the Court approves the settlement.

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<sup>2</sup> A court approved successor or personal representative of a deceased Plaintiff may accept or reject the deceased Plaintiff's individual settlement offer and if no court appointed successor or representative is appointed under Rule 25, the deceased Plaintiff will be deemed to have rejected the individual settlement offer. Any reference herein to Plaintiffs and Settling Plaintiffs shall be deemed to include the successor or personal representative.

8. Each Settling Plaintiff shall be obligated to obtain his or her own independent tax advice concerning the proper income reporting and tax obligations regarding any and all payments and/or other remuneration he or she receives or obtains pursuant to this Agreement, without any contribution whatsoever from Defendant, Defendant's counsel or Plaintiffs' Counsel. Nothing in this Agreement shall be construed as Defendant, Defendant's counsel or Plaintiffs' Counsel providing any advice regarding the reporting or payment of taxes or the tax consequences of a Settling Plaintiff's participation in any portion of this Agreement.

9. Defendant shall implement the following programmatic changes:

- (a) Defendant shall install between 4 and 6 additional Kronos devices outside the Protected Area portals;
- (b) Employees<sup>3</sup> who change into company-provided clothes will be directed to change into those clothes at the beginning of their scheduled shift. Changing into clothes will be on paid time and should not occur before the start of the scheduled shift. Daily start-of-shift meetings will commence 10 to 15 minutes after the start of the shift; and
- (c) CNS may reassign change house locations so that an employee's change house is closer to the start-of-shift meeting location..

10. As to Paragraph 9(a) of this Agreement, Defendant currently believes that the installation of additional Kronos devices outside of Posts 8 and 33 will be completed by the time the Court approves the settlement. If the Kronos devices are not in place within two weeks of court approval, Defendant shall allow workers to Kronos out at existing machines outside the Protected Area between Post 8 and 9723-33 change house. If, after two months of implementing this interim measure, the Parties agree that this interim measure creates significant backlog or bottleneck, the parties agree to reconvene and work cooperatively to modify/alter the interim solution so that bottlenecks/backlogs are eliminated. This interim measure will no longer be in effect after the installation of the 4 to 6 additional Kronos machines.

11. Upon the Court's approval of the Agreement, all Settling Plaintiffs will have their claims dismissed with prejudice. The claims of Plaintiffs who timely reject their individual settlement offers will be dismissed without prejudice and any such Plaintiffs shall have thirty (30) days from the dismissal of their claims to file a subsequent action in order to preserve consent-based tolling. Failure of a Plaintiff who timely rejected his or her individual settlement offer to re-file his or her claim within this timeline will result in forfeiture of consent-based tolling but will not result in forfeiture of his or her claim.

12. No amount of the \$4,900,000.00 settlement amount will revert to CNS. The Parties shall seek the Court's guidance on the ultimate disposition of any undistributed settlement

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<sup>3</sup> As used in paragraph 9, "employees" refers to CNS employees who are represented by the Atomic Trades and Labor Council other than employees in the Firefighter Group and PF Armorer group.

proceeds. The parties will request the Court retain jurisdiction for the purpose of resolving any disputes regarding the terms of this Settlement Agreement and to resolve any dispute over disposition of undistributed settlement proceeds.

13. Each and every Settling Plaintiff hereby knowingly and voluntarily releases Defendant, the DOE, and NNSA for all known and unknown claims for overtime compensation, minimum wages, liquidated damages, and interest under the FLSA, 29 U.S.C. § 201, *et seq.*, arising from the Settling Plaintiff's employment with Defendant within the relevant statutory period up to the date of the Court's approval of the settlement.

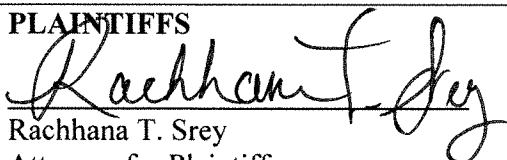
14. This Agreement is not an admission of liability by Defendant, does not imply that Defendant engaged in any unlawful or wrongful conduct, and Plaintiffs will not use this Agreement as evidence of the same. The Parties agree that CNS has not acted willfully.

15. If the Court fails to enter the Order referenced in paragraph 5 of this Agreement, the Agreement and its terms shall be null and void.

16. This Agreement is intended by the Parties to be binding on them and to serve as the formal documentation of the terms of their settlement. This Settlement Agreement constitutes the entire agreement between the Parties hereto. The Parties agree that this Settlement Agreement merges all previous oral or written agreements that the Parties may have concerning this matter. No amendment or modification to this Settlement Agreement shall be valid unless made in writing and signed by the Plaintiffs and the CNS General Counsel.

17. Counsel for the Parties agree to and shall use their best efforts to fully cooperate with each other in good faith and to take all actions reasonably necessary to implement the terms of this Agreement.

**THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND FULLY UNDERSTAND THE MEANING AND INTENT OF ALL THE PROVISIONS AND TERMS OF THIS AGREEMENT, INCLUDING THE FINAL AND BINDING EFFECT OF THEIR RELEASE OF CLAIMS AND WAIVER OF RIGHTS.**

<p><b>PLAINTIFFS</b>  Rachhana T. Srey Attorney for Plaintiffs Dated this <u>16<sup>th</sup></u> day of <u>May</u>, 2024</p>	<p><b>DEFENDANT</b> CONSOLIDATED NUCLEAR SECURITY, LLC  _____ Kristi M. Stogsdill Associate General Counsel  _____ X Attorney for Defendant Dated this ___ day of _____, 2024</p>
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