

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the “Agreement”) is effective when (1) signed by all the Parties, (2) the Court signs and files the proposed Order attached hereto as Exhibit 3, and (3) thirty days after notice is sent to Plan participants pursuant to Prohibited Transaction Class Exemption 1994-71, and is made and entered into by and among Energy Research & Generation, Inc. and ERG Aerospace (hereinafter collectively referred to as “ERG”), Nicholas Saakvitne (“Saakvitne”), as the Trustee of the Energy Research & Generation, Inc. Profit Sharing Plan (hereinafter “the Plan”), Eric Benson, Bradley Benson, Elizabeth Benson, the United States of America, and the following participants in the Plan: Antonio Gomez, Berry Seamon, Bryan Leyda, David Crotzer, Ernie Ward, Evelyn Hermsmeier, Noel Crisolo, Melody Carter, Logan Thiesen, Edward Clark, Robert Perez, Stephen Dyer, David Wilkerson and Frank Raskauskas (collectively, “the Parties”).

RECITALS

WHEREAS, on April 8, 2015, an Order and Judgment in *ERG Aerospace Corp. v. United States*, Case No. 13-cv-02973-VC, was filed which stated, in pertinent part, “Judgment is entered in favor of the United States of America and against ENERGY RESEARCH & GENERATION, INC. in the amount of \$24,086,135.69, plus statutory interest from March 25, 2013, until paid.” The amount of the Judgment of \$24,086,135.69 relates to taxes, penalties and interest for the tax years 1988-1995 (“Judgment Years”). As of November 27, 2016, the total taxes, penalties, and interest due and owing by ERG for the years 1989-1995 (“Judgment Years”) and 1999-2011 (Assessed Years” or “Nonjudgment Years”) is \$29,241,327.30. Interest has and will continue to accrue from the dates mentioned above.

WHEREAS, on March 27, 2014, a Second Superseding Indictment was filed in the criminal case of United States v. Burton Orville Benson and Eric Burton Benson, Case No. 12-cr-00480-YGR. On April 21, 2017, Burton Benson (“Benson”) passed away, and on May 26, 2017 the aforementioned criminal action was dismissed.

WHEREAS, on May 6, 2014, a Complaint for Injunctive Relief Pursuant to 18 U.S.C. §1345 was filed in the civil case of *United States v. Burton Orville Benson*, Case No. 14-cv-02071-YGR requesting appointment of an independent fiduciary to replace Burton Benson and to manage the Plan and its assets for duration of any awarded injunctive relief. On May 6, 2014, the government also filed an Ex Parte Motion for Preliminary Injunction. On May 23, 2014, the Court granted the Motion for Preliminary Injunction. On May 27, 2014, the Court appointed Nicholas Saakvitne as trustee and independent fiduciary. On May 27, 2014, the Court appointed Metro Benefits, Inc. as the forensic accounting firm for the Plan pursuant to a government petition for an injunction under 18 U.S.C. §1345. On May 12, 2017, ERG as an intervenor filed its motion to dismiss the prohibitory preliminary injunction against Burton Benson, now deceased, and the mandatory injunction appointing Nicholas Saakvitne and Metro Benefits as trustee/administrator of the Energy, Research & Generation, Inc. Profit Sharing Plan, which was denied without prejudice.

WHEREAS, in August 2014, Eric Benson and the United States Attorney's Office entered into agreements whereby Eric Benson agreed to transfer all of his interest (in any capacity, whether ownership or control) in various entities and properties to the Plan.

WHEREAS, in February 2015, Bradley Benson and the United States Attorney's Office entered into agreements whereby Bradley Benson agreed to transfer all of his interest (in any capacity, whether ownership or control) in various entities and properties to the Plan.

WHEREAS, on June 30, 2015, the Plan filed a Complaint against ERG in the case of *Nicholas Saakvitne v. Energy Research & Generation, et al.*, Case No. 4:15-cv-3026-YGR. ERG entered into a settlement with the Plan in which ERG agreed to pay the Plan a total of \$4,515,565.00. A copy of the Settlement Agreement is attached as Exhibit 1 (the "First Settlement Agreement"). A Stipulated Judgment in the above-captioned action was entered on March 10, 2016. ERG's obligations under the Stipulated Judgment were fully satisfied as of September 13, 2017.

WHEREAS, on November 9, 2016, ERG submitted a Settlement Offer / Offer in Compromise to the Department of Justice and the Internal Revenue Service. As of November 27, 2016, the total taxes, penalties, and interest due and owing by ERG for the years 1989-1995 and 1999-2011 is \$29,241,327.30. That Settlement Offer / Offer in Compromise is still pending before the Tax Division of the U.S. Department of Justice. ERG understands and believes that its obligations to the IRS take priority over ERG's obligations to the Plan.

WHEREAS, as of June 30, 2017, the State of California Franchise Tax Board ("FTB") claims that ERG owes a total of approximately \$5,868,206.83 to relating to the tax years 1988-1995 and 2003-2014. In order to resolve the amounts due and owing to the FTB, ERG will be submitting a request for an installment payment plan with the FTB and, based upon FTB policy, ERG anticipates that ERG will be required to pay the entire \$5,868,206.83 plus interest within 12 months. ERG understands and believes that its obligations to the FTB take priority over ERG's obligations to the Plan.

WHEREAS there is currently pending in the United States District Court for the Northern District of California the case of *Nicholas Saakvitne v. Burton Orville Benson*, Case No. 4:15-cv-5091-YGR. On June 13, 2017, Plaintiff filed a Motion to Substitute Parties which is currently pending.

WHEREAS there is currently pending in the United States District Court for the District of the Virgin Islands the case of *Nicholas Saakvitne v. Bay Estates Group Limited Liability Limited Partnership, et al.*, Case No. 1:16-cv-59-CVG-GWC, ("the Foreclosure Action").

WHEREAS the Plan Participants believe it is in their best interests to transfer their interests in the various properties to ERG in exchange for the payments referred to below.

WHEREAS, ERG believes that the Internal Revenue Service and the Franchise Tax Board's ability to collect from ERG is not adversely impacted by this Agreement because the Plan is providing assets to ERG that are of at least of equal value to the payments the Plan will

receive from ERG. In addition, ERG believes that both the IRS and FTB have the right to place junior liens on these property interests once they are placed in the name of ERG.

THE AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, and intending to be legally bound, ERG and the Plan hereby agree as follows:

1. **Payments.** In accordance with the terms of the Second Settlement Agreement, ERG agrees to pay \$3,250,000 in principal to the Plan for the property interests referred to below. ERG will make payments of \$55,000 per month to the Plan from the effective date of this Agreement through the March 2019 payment.

Beginning April 1, 2019, ERG will make payments to the Plan equaling 50% of the amount by which average monthly revenue for the prior 6 months exceeds average monthly expenses for the prior 6 months. However, the payments to the FTB of the \$5,868,206.83, plus interest, shall be excluded from the calculation of "average monthly expenses."

Interest at the rate of 6% per anum will begin to accrue on the effective date of this Agreement.

It is understood and agreed the cap referred to in the First Settlement Agreement is not applicable to the \$3,250,000.

Bradley Benson, as General Manager of EM&B, will take all necessary steps to deliver good title to the property located at 15260 South Shore Drive, Truckee, California ("the Donner Lake Property"), to the Plan. As addressed in Paragraph 2 immediately below, the Plan will then transfer the Donner Lake Property to ERG as part of this settlement.

2. **Transfers and/or Relinquishment of Rights by the Plan to ERG.** In exchange for the above-mentioned payments, the Plan will transfer and/or relinquish to ERG any and all right, title and interest (in any capacity whether ownership or control) the Plan may have immediately following the signing of this Agreement by all Parties in:

a. Sargent Ranch Partners, LLC, including all rights and duties attendant thereto.

b. Properties in Saint Croix including the properties located at 3 King Cross and 254 Estate Glynn, subject to all liens and encumbrances against the properties. Upon the effective date of this Agreement, ERG will immediately become responsible for all payments to Moore, Dodson & Russell, PC, for work performed and expenses incurred on and after the effective date of this Agreement. ERG further agrees that Moore, Dodson & Russell, PC or whatever new law firm ERG retains to handle the Foreclosure Action, will provide the Plan with publicly available information about the status of the Foreclosure Action upon request by the Plan so that the Plan can monitor the status of its security (hereinafter referred to the "Virgin Island Properties").

c. Acacia Properties, LLC, dba Benson Properties, Ltd. including but not limited to the properties located at 189 Ivy Drive, Orinda, California; 266 Elsie Drive, Danville, California; 3341 N. Lucille Lane, Lafayette, California; 7 Mount Pleasant, St. Croix; 3 Arroyo Drive, Orinda, California (subject to a claim by Evelyn Hermsmeier that she owns 3 Arroyo Drive); 143 Alice Lane, Orinda, California, subject to all liens and encumbrances against the properties.

d. EM&B, LLC including 15260 South Shore Drive, Truckee, California (“Donner Lake Property”), subject to all liens and encumbrances against the properties.

ERG will pay all the costs of the transfer of the aforementioned properties.

3. **Legality of Transfer.** ERG and the Plan shall share the cost of obtaining a legal opinion as the legality of the transfers described in Paragraphs 1 and 2. This settlement is contingent upon the Court approving the transfers as exempt from the prohibited transaction provisions of *ERISA*. It is the intent of the Parties that the transfers from the Plan to ERG described in Paragraphs 1 and 2 above are exempt from the prohibited transaction provisions of *ERISA* pursuant to Prohibited Transaction Class Exemption 94-71, and the Parties agree to take all steps necessary to comply with that exemption.

4. **Approval of the Department of Labor.** By signing this Agreement, the United States, on behalf of the Secretary of Labor, hereby agrees that the transactions described in Paragraphs 1 and 2 above are exempt from the prohibited transaction provisions of *ERISA* pursuant to Prohibited Transaction Class Exemption 94-71.

5. **Disclosure to Department of Justice Tax Division and No Objection by DOJ Tax.** The Parties understand and acknowledge that there is an Order and Judgment in Case No. 13-cv-02979-CV, “in favor of the United States of America and Against ENERGY RESEARCH & GENERATION, INC., in the amount of \$24,086,135.69, plus statutory interest from March 25, 2013, until paid.” ERG further understands and acknowledges that, as of November 27, 2016, the total taxes, penalties, and interest due and owing by ERG for the years 1989-1995 and 1999-2011 is \$29,241,327.30. The Parties further understand and acknowledge that the IRS has recorded liens against ERG. ERG understands and acknowledges that the payment of the taxes penalties and interest owing to the IRS takes priority over any amounts owing to the Plan. The Parties further understand and agree that the final draft of this agreement will be provided to the Department of Justice Tax Division and if DOJ Tax interposes any objection before the effective date of this Agreement, the Agreement will be null and void.

6. **Disclosure to California Franchise Tax Board and No Objection by FTB.** The Parties understand and agree the final draft of this Agreement including payment terms will be disclosed to the FTB and if the FTB objects before the effective date of this Agreement, then this Agreement shall be null and void.

7. **Dismissal of *United States v. Burton Benson* and *Saakvitne vs. Burton Benson*, and Removal of Court-Appointed Trustee.** Upon this Agreement becoming effective, the civil

case of *United States v. Burton Orville Benson*, Case No. 14-cv-02071-YGR shall be dismissed with prejudice and the Preliminary Injunction shall be dissolved. Nicholas Saakvitne, the Trustee appointed by the Court, shall be removed upon the effective date of the appointment of a new Trustee pursuant to Paragraph 7. The civil case of *Saakvitne v. Benson*, Case No. 15-cv-3026-YGR, shall be dismissed with prejudice upon the execution of this Agreement, provided, however that the Court retains jurisdiction to enforce the Order, attached hereto as Exhibit 3.

8. **ERG's Appointment of a New Trustee.** Pursuant to Sections 2.3(a) and 7.9(c) of the Plan documents, ERG shall appoint a new Trustee upon this Agreement becoming effective. Appointment of the new Trustee will be subject to approval by Saakvitne and David Shapiro, counsel for the participants in the Plan. It is hereby agreed that the new Trustee will not change the respective percentage interests in the Plan of each of the participants in the Plan, as calculated by Metro Benefits during the period when Saakvitne was Trustee. The participants' percentage interests have been determined based on the assumption that Burton Benson's participant interest in the Plan is forfeited (which is provided for in Paragraph 9 herein). Payments will be made to the participants in accordance with Exhibit 2 hereto or *pro rata* in accordance with Exhibit 2.

9. **Plan Payments to Elizabeth Benson.** The Plan shall make payments to Elizabeth Benson in the amount of \$12,000 per month for 21 months or until her death, whichever occurs first, in full satisfaction of Burton Benson's interest in the Plan as a participant. Burton Benson's interest as a participant in the Plan in excess of this amount shall be forfeited pursuant to 26 U.S.C. §401(a)(13)(C)(ii) and 29 U.S.C. §1056(d)(4)(B) due to Burton Benson's fiduciary breaches as Trustee of the Plan. Any interest in the Plan by Elizabeth Benson as Burton Benson's sole beneficiary is also forfeited. The forfeiture of the interest of Burton Benson and his beneficiaries is to be confirmed by this Court. A copy of the executed Stipulation and [Proposed] Order is attached hereby as Exhibit 3. The Parties understand and agree that this Agreement will not be effective unless and until the Court approves the forfeiture of Burton Benson's interest in the Plan. However, nothing in this paragraph shall affect Elizabeth Benson's right to her interest in the Plan as a participant due to being a former employee.

10. **ERG Payments to Elizabeth Benson.** ERG shall be permitted to make payment of \$12,000 per month to Elizabeth Benson for the remainder of her life, beginning after the Plan's payments end. The United States and ERG agree that said payments are not in violation of the Stipulated Judgment entered in the case of *ERG Aerospace Corporation vs. United States*, Case No. 13-cv-02979-VC. The United States and ERG have filed a Stipulation and Order to modify the Stipulated Judgment accordingly, and this Agreement will not be effective until Judge Chhabria approves of the Stipulation.

11. **Civil Forfeiture Agreements Will be Declared Null and Void.** Upon this Agreement becoming effective, the agreements signed by Bradley Benson and/or Eric Benson in which they agreed to transfer any interests in properties and/or entities to the Plan, including any Civil Forfeiture Agreements, shall become null and void. Any such interests in property and/or entities shall be transferred to ERG by Bradley Benson and/or Eric Benson. However, as set

forth above in Paragraph 2, Bradley Benson will cooperate to transfer good title in the Donner Lake Property to the Plan, subject to transfer thereafter to ERG.

12. **Baden Spiel Haus.** The Parties hereto acknowledge and agree that Evelyn Hermsmeier shall sell the property owned by the Baden Spiel Haus partnership, located at 11562 Baden Road, Truckee, CA 96161, as soon as practical. The Plan will receive 50% of the net proceeds of the sale, less expenses paid by Hermsmeier in the last 18 months that were not reimbursed to her by the partners in the partnership, directly from escrow.

13. **Evelyn Hermsmeier and the ERG Ford Trust.** In full and complete settlement of all claims by Evelyn Hermsmeier against the Plan, the Plan will distribute or directly rollover to Hermsmeier a lump sum of \$250,000 no later than 30 days after the effective date of this Agreement. In addition, on or about that same date, ERG will pay Hermsmeier a lump sum of \$200,000. All of the assets held in the name of the alleged ERG Ford Trust are deemed assets of the Plan. Hermsmeier will cooperate with the Plan to the extent necessary to transfer any of those assets from the name of the ERG Ford Trust to the Plan. To the extent that the ERG Ford Trust's interest in Sargent Ranch Partners, LLC is transferred to the Plan, that interest in turn will be transferred to ERG pursuant to and in accordance with Paragraph 2(a) above. Nothing in this paragraph shall affect Hermsmeier's right to her interest in the Plan as a participant due to being a former employee. The transfer of property held in the name of the ERG Ford Trust to the Plan shall be confirmed by Court Order and this Agreement will not be effective unless and until there is Court approval.

14. **Consent to Jurisdiction.** By signing this Agreement, the Parties hereto consent to the jurisdiction of the Court in *Saakvitne v. Benson*, Case No. 15-cv-3026-YGR, to effectuate the terms of the Agreement.

15. **Waiver and Release.** Except as set forth below, and with the exception of the United States, upon the effective date of this Agreement, the Parties hereto, and their predecessors, successors, employees, officers, directors, heirs, trusts, trustees, assigns and agents, including the ERG Trust, Acacia Properties, Baden Spiel Partnership and EM&B (the "Releasing Parties"), hereby waive, release, relinquish, acquit, and forever discharge each other, including their predecessors, successors, employees, officers, directors, heirs, trusts, trustees, assigns, agents and their attorneys, including, but not limited to, Fabian VanCott; Boersch Shapiro LLP; Albert & Will, LLP; Moore, Dodson & Russell, PC; and Metro Benefits, Inc., of and from any and all claims, demands, rights, liens, claims for relief, actions, causes of action, and the like, of every kind and nature whatsoever, known and unknown, suspected and unsuspected, anticipated and unanticipated, past, present and future, whether arising at law, under a contract, in tort, in equity, or otherwise, for all injuries, economic loss, damages, losses, attorneys' fees, costs, expenses, or otherwise, including without limitation all consequential, general, special, and/or punitive damages, resulting or to result from, or in any way arising out of, related to, or in connection with, any act or omission to the date hereof, including but not limited to any and all matters related to or referred to in the pleadings in the cases of *United States v. Benson*, Case No. 14-cv-02071-YGR; *Saakvitne v. Energy Research & Generation Inc.*, Case No. 15-cv-03026-YGR; *Saakvitne v. Benson*, Case No. 15-cv-5091-YGR; *ERG Aerospace v. United States*, Case No. 13-cv-02973-VC; *Saakvitne v. Bay Estates Group Limited Liability Limited Partnership, et*

al., Case No. 16-cv-59-CVG-GWC; and the Forfeiture Agreements entered into by Eric Benson and Bradley Benson.

16. **California Civil Code § 1542 Waiver.** It is a condition hereof and it is the intention of each Party to this Agreement that it shall be effective as a bar to each and every claim, demand, cause of action specified above; and in furtherance of this intention, the Releasing Parties hereby expressly waive any and all rights or benefits conferred upon them by the provisions of section 1542 of the California *Civil Code*, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In connection with such waiver and relinquishment of all rights or benefits conferred under section 1542 of the *Civil Code*, or similar state law, each Party to this Agreement is aware and hereby acknowledges that he, she or it may hereinafter discovery claims or facts in addition to or different from those which may now be known or believed to be true with respect to the matters released herein, but that it is the intention of the Parties hereto to hereby fully, finally, and forever settle and release all matters hereinabove specified, whether known or unknown, suspected or unsuspected, which now exist, may exist or have previously existed between the Parties. In furtherance of such intention, the releases herein given shall be, and shall remain, in effect as full and complete releases of the matters released, notwithstanding the discovery of or the existence of additional or different facts.

17. **Releases By and for the United States.** The United States also hereby releases any claims resulting from or in any way arising out of, related to, or connected with any and all matters related to or referred to in the pleadings in the cases of *United States v. Benson*, Case No. 14-cv-02071-YGR, and *Saakvitne v. Burton Benson*, Case No. 15-cv-03026-YGR against all the Parties hereto. The Parties hereto release any claims against the United States arising out of, related to, or connected with any and all matters referred to in the pleadings in the cases of *United States v. Benson*, Case No. 14-cv-02071-YGR, and *Saakvitne v. Burton Benson*, Case No. 15-cv-03026-YGR. However, nothing herein shall affect the judgment in favor of the Internal Revenue Service (“IRS”) and against ERG referred to in the Recitals or any liens recorded by the IRS.

18. **Security, Default, and Claw Back.** ERG will provide the Plan with a first deed of trust with respect to the property located at 15260 South Shore Drive, Truckee, California.

ERG will provide the Plan with a first deed of trust or the equivalent under Virgin Island law with respect to the properties located at 3 King Cross and 254 Estate Glynn in the Virgin Islands. If 3 King Cross and/or 254 Estate Glynn is sold to a higher bidder at the foreclosure auction, 100% of the proceeds from the sale or sales will be provided directly from escrow to the Plan and applied against the balance owed by ERG pursuant to this Agreement.

ERG will also pledge to the Plan all of the units in Sargent Ranch Partners, LLC transferred by the Plan to ERG (“the Sargent Ranch Units”), and will cooperate with the Plan to facilitate the recording of a UCC-1 filing with respect to the Sargent Ranch Units.

ERG payments to the Plan as outlined below will result in the Plan transferring title to ERG and/or releasing any interest in the properties as follows:

- a. After payments totaling \$2,350,000 in principal by ERG to the Plan, the Trustee will transfer legal title to ERG and/or release any and all interests the Plan may have in Sargent Ranch Partners, LLC;
- b. After payment of the next \$200,000 in principal by ERG to the Plan, the Trustee will transfer legal title to ERG and/or release any and all interests the Plan may have in the properties described in Paragraphs 2(b)-(c); and
- c. After the final payment of \$700,000 in principal by ERG to the Plan, the Trustee will transfer legal title to ERG and/or release any and all interests the Plan may have in the Donner Lake Property.

Should ERG sell any of the properties transferred by the Plan to ERG as part of this Agreement, ERG agrees to transfer the net proceeds to the Plan directly from escrow, until the full amount of \$3,250,000 plus interest, has been paid under this Agreement.

In addition, should ERG sell any of the properties transferred by the Plan to ERG as part of this Agreement within one year of the effective date of this Agreement, then the Plan will be entitled to claw back 20% of the profit upon the sale of any of the properties. For purposes of determining profit, the sales price of the Donner Lake Property is \$800,000, the sales price of 3 King Cross is \$300,000, the sales price of 254 Estate Glynn is \$100,000, and the sales price of each 1.0% interest in Sargent Ranch Partners, LLC is \$522,222.

The monthly payment amount to be made to the Plan will be due on the first day of every month until payment in full is made. If any monthly payment is not received by the Plan by the 11th day of any month, ERG will be in default. ERG will have the opportunity to cure the default within sixty days, but the Plan is under no obligation to give notice of default.

In the event that a payment is not made by the 11th day of the month, the Plan will meet with ERG and confer in good faith in an attempt to resolve the matter prior to executing on the Judgment. However, if ERG is unable to cure the default within the sixty-day period provided, and the meet and confer discussions between the Plan and ERG do not resolve the matter, the Plan will be entitled to take whatever steps it deems appropriate to enforce the Judgment and to foreclose on its security interests in the property described in Paragraph 2.

19. **Exceptions to this Agreement.** The exceptions to this Agreement are as follows:

- a. Any actions to enforce this Agreement.

b. Any actions permitted hereunder in the event of default by ERG.

c. This Agreement is also contingent upon the Court issuing an Order substantially in the form of the Stipulation and [Proposed] Order attached hereto as Exhibit 3.

20. **Good Faith Compromise and No Admissions.** This Agreement is the result of a good faith compromise and settlement of disputed claims and shall not at any time, or for any purpose, be considered an admission of liability or of merit or correctness of any claim advanced by any Party, or of liability or responsibility of the Parties.

21. **Further Assurances.** The Parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Settlement Agreement.

22. **Governing Law.** This Agreement shall be governed by, construed in and enforced in accordance with the laws of the State of California and the United States where applicable without regard to choice of law or conflict of law.

23. **Amendments.** This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by each of the Parties affected thereby.

24. **Waivers.** No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

25. **Voluntary Agreement.** The Parties represent that they have carefully read this Agreement, know its contents, and execute the Agreement voluntarily.

26. **Severability.** If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement nevertheless shall be construed, performed, and enforced as if the invalid or unenforceable provision had not been included in the text of the Agreement.

27. **Drafting.** The drafting and negotiation of this Agreement have been participated in by each of the Parties, and for all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

28. **Counterparts.** If this Agreement is executed by signatures transmitted by facsimile or email in counterparts, each counterpart shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the Parties.

29. **Entire Agreement.** All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties hereto concerning the subject matter hereof are contained in this Agreement. All prior and contemporaneous conversations, negotiations,

possible and alleged agreements, representations, covenants and warranties concerning this subject matter hereof are merged herein. This is an integrated Agreement.


30. **Attorneys' Fees and Costs.** Provided each Party complies with the terms and conditions of this Agreement, each Party shall bear its own attorney's fees and costs incurred through the execution of this Agreement. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement or otherwise resolve any dispute between the Parties arising hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and other legal costs from the other Party or Parties.

31. **Authority.** The Parties represent and warrant that they have full power, authority and capacity to execute this Agreement and perform the obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year set forth.

ENERGY RESEARCH & GENERATION, INC.
PROFIT SHARING PLAN

Date: Sept 11, 2017

By: 
NICHOLAS SAAKVITNE, Trustee

ENERGY RESEARCH & GENERATION, INC. AND
ERG AEROSPACE

Date: SEPT 11, 2017

By: 
MITCHELL K. HALL

BRIAN STRETCH, UNITED STATES
ATTORNEY'S OFFICE

Date: _____

By: _____
JULIE C. REAGIN
Assistant United States Attorney

ERIC BENSON

Date: _____

possible and alleged agreements, representations, covenants and warranties concerning this subject matter hereof are merged herein. This is an integrated Agreement.

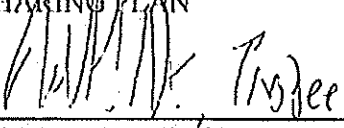
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PROFIT SHARING PLAN

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By: 
NICHOLAS SAAKVINE, Trustee


ENERGY RESEARCH & GENERATION, INC. AND
ERG AEROSPACE

Date: SEPT 11, 2017

By: 
MITCHELL K. HALL

BRIAN STRETCH, UNITED STATES
ATTORNEY 

Date: 9/14/17

By: 
JULIE C. REAGIN
Assistant United States Attorney

ERIC BENSON

Date: _____

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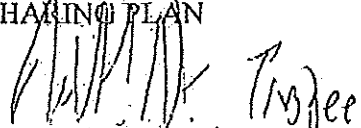
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Date: Sept 11, 2017

By: 
NICHOLAS SAAKVITNE, Trustee

ENERGY RESEARCH & GENERATION, INC. AND
ERG AEROSPACE

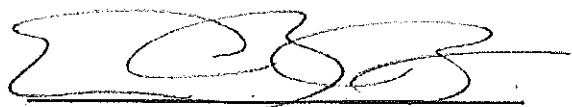
Date: SEPT 11, 2017

By: 
MITCHELL K. HALL


BRIAN STRETCH, UNITED STATES
ATTORNEY 

Date: 9/14/17

By: 
JULIE C. REAGIN
Assistant United States Attorney


ERIC BENSON

Date: 18 Oct 2017


BRADLEY BENSON on behalf of himself
and EM&B, LLC

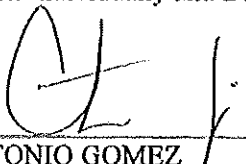
Date: 10-12-17

ELIZABETH BENSON, and behalf of herself
individually and Acacia Properties

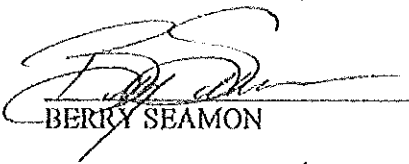
Date: _____

EVELYN HERMSMEIER, on behalf of
herself individually and Baden Spiel

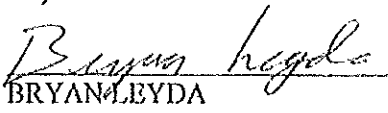
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ANTONIO GOMEZ

Date: 09/14/17


BERRY SEAMON

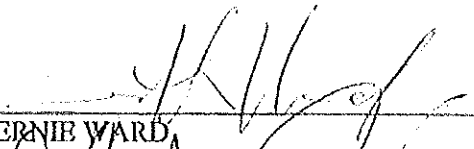
Date: 9-14-17


BRYAN LEYDA


Date: 9-14-17


DAVID CROTZER

Date: 9/14/17


ERNIE WARD

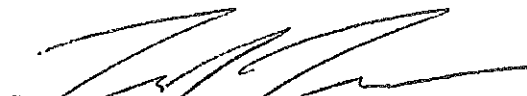
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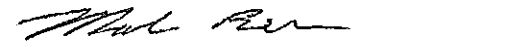
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MELODY CARTER

Date: 9-14-17


BRADLEY BENSON on behalf of himself
and EM&B, LLC

Date: 10-12-17

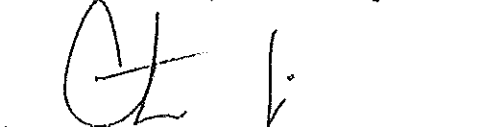

AS GUARDIAN AD LITEM FOR
ELIZABETH BENSON, and behalf of herself
individually and Acacia Properties

11/3/2017

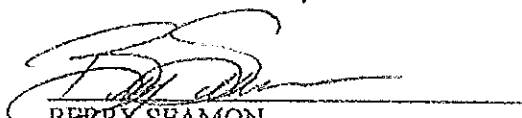
Date: _____

EVELYN HERMSMEIER, on behalf of
herself individually and Baden Spiel


Date: _____


ANTONIO GOMEZ

Date: 09/14/17


BERRY SEAMON


Date: 9-14-17


BRYAN LEYDA

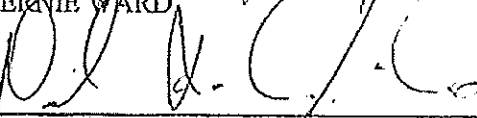
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DAVID CROTZER

Date: 9/14/17


BERNIE WARD

Date: 9-14-17


NOEL CRISOLO

Date: 9/14/17


MELODY CARTER

Date: 9-14-17

BRADLEY BENSON on behalf of himself
and EM&B, LLC

Date: _____

ELIZABETH BENSON, and behalf of herself
individually and Acacia Properties

Date: _____

Evelyn Hermsmeier

EVELYN HERMSMEIER, on behalf of
herself individually and Baden Spiel

Date: 9/15/2017

ANTONIO GOMEZ

Date: _____

BERRY SEAMON

Date: _____

BRYAN LEYDA

Date: _____

DAVID CROTZER

Date: _____

ERNIE WARD

Date: _____

NOEL CRISOLO

Date: _____

MELODY CARTER

Date: _____



LOGAN PIHESEN

Date: 9/14/17

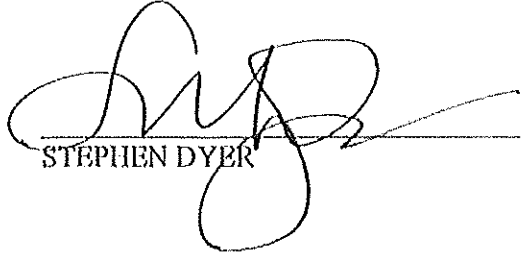
EDWARD CLARK

Date: _____



ROBERT PEREZ

Date: 09/14/17



STEPHEN DYER

Date: 09/14/17

FRANK RASKAUSKAS

Date: _____

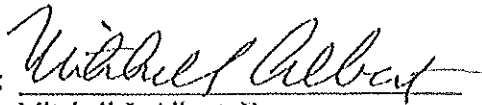
DAVID WILKERSON

Date: _____

Approved as to form:

ALBERT & WILL, LLP

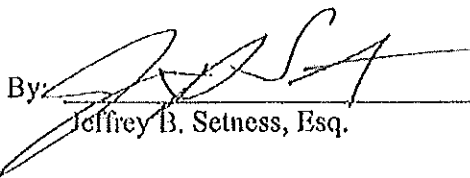
Date: 9/14/17

By: 

Mitchell J. Albert, Esq.

FABIAN VANCOTT

Date: _____

By: 

Jeffrey B. Setness, Esq.

Date: SEPT 11, 2017

LOGAN THIESEN

Date: _____



EDWARD CLARK

Date: 9-14-17

ROBERT PEREZ

Date: _____

STEPHEN DYER

Date: _____

FRANK RASKAUSKAS

Date: _____


DAVID WILKERSON

Date: _____

Approved as to form:

ALBERT & WILL, LLP

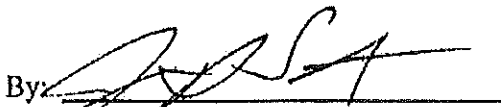
Date: 9/14/17

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Jeffrey B. Setness, Esq.

Date: SEPT 11, 2017

LOGAN THIESEN

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EDWARD CLARK

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STEPHEN DYER

Date: _____

Frank Raskauskas
FRANK RASKAUSKAS

Date: 11-1-17

DAVID WILKERSON

Date: _____

Approved as to form:

ALBERT & WILL, LLP

By: *Mitchell J. Albert*
Mitchell J. Albert, Esq.

Date: 9/11/17

FABIAN VANCOTT

By: *Jeffrey B. Setness*
Jeffrey B. Setness, Esq.

Date: _____

Date: SEPT 11, 2017

LOGAN THIESEN

Date: _____

EDWARD CLARK

Date: _____

ROBERT PEREZ

Date: _____

STEPHEN DYER

Date: _____

FRANK RASKAUSKAS

Date: _____

David Wilkerson
DAVID WILKERSON

Date: 10/9/17

Approved as to form:

ALBERT & WILL, LLP

Date: 9/16/17

By: *Mitchell Albert*
Mitchell J. Albert, Esq.

FABIAN VANCOTT

Date: _____

By: *JBS*
Jeffrey B. Setness, Esq.

Date: SEPT 11, 2017

LOGAN THIESEN

Date: _____

EDWARD CLARK

Date: _____

ROBERT PEREZ

Date: _____

STEPHEN DYER

Date: _____

FRANK RASKAUSKAS

Date: _____

DAVID WILKERSON

Date: _____

Approved as to form:

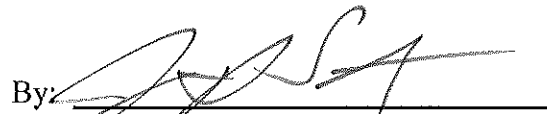
ALBERT & WILL, LLP

Date: 9/14/17

By: 
Mitchell J. Albert, Esq.

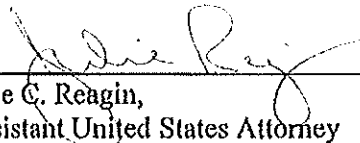
FABIAN VANCOTT

Date: _____

By: 
Jeffrey B. Setness, Esq.

Date: SEPT 11, 2017

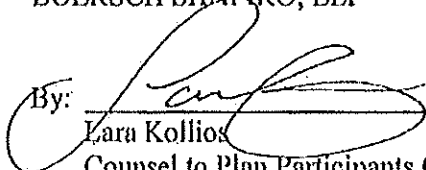
BRIAN STRETCH
UNITED STATES ATTORNEY

By: 
Julie C. Reagin,
Assistant United States Attorney

DAL 7/19/17

BOERSCH SHAPIRO, LLP

Date: 9/11/2017

By: 
Lara Kollios
Counsel to Plan Participants Other Than
Frank Raskauskas and David Wilkerson

BRIAN STRETCH
UNITED STATES ATTORNEY

By: _____
Julie C. Reagin,
Assistant United States Attorney

BOERSCH SHAPIRO, LLP

Date: 9/11/2017

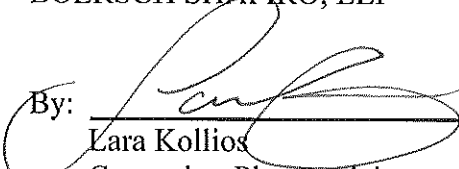
By:  _____
Lara Kollios
Counsel to Plan Participants Other Than
Frank Raskauskas and David Wilkerson

EXHIBIT 1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made and entered into this 25th day of June 2015, by and among Energy Research & Generation, Inc. and ERG Aerospace Corporation, both doing business as ERG Materials and Aerospace Corporation (hereinafter collectively referred to as "ERG") and Nicholas Saakviltne as the Trustee of the Energy Research & Generation, Inc. Profit Sharing Plan (hereinafter "the Plan") (collectively, "the Parties").

RECITALS

WHEREAS, on March 27, 2014, a Second Superseding Indictment was filed in the criminal case of *United States v. Burton Orville Benson and Eric Burton Benson*, Case No. 12-cr-00480-YGR.

WHEREAS, on May 6, 2014, a Complaint was filed in the civil case of *United States v. Burton Orville Benson*, Case No. 14-cv-02071-YGR.

WHEREAS, on October 16, 2013, in the civil case of *ERG Aerospace Corporation vs. United States*, Case No. 13-cv-02979-VC, the United States filed its Answer & Counterclaim in Case No. 13-cv-02979-VC.

WHEREAS, on April 8, 2015, an Order and Judgment in Case No. 13-cv-02979-VC, was filed which stated, in pertinent part, "Judgment is entered in favor of the United States of America and against ENERGY RESEARCH & GENERATION, INC. in the amount of \$24,086,135.69, plus statutory interest from March 25, 2013, until paid."

WHEREAS, in correspondence dated October 29, 2014, ERG was notified by the Department of the Navy that it had been suspended from contracting with the Department of the Navy.

WHEREAS, according to Section 3 on Page 2 of the Energy Research & Generation, Inc. Profit Sharing Plan Summary Plan Description, the Plan Administrator is Energy Research & Generation Inc., and according to the Form 5500, Annual Return/Report of Employee Benefit Plan for 2009, the Plan Sponsor is Energy Research & Generation Inc.

WHEREAS the Plan contends that ERG was the Plan Administrator and thereby a plan fiduciary at all times relevant herein.

WHEREAS the Plan contends that Burton Benson ("Benson"), the Trustee of the Plan prior to the appointment of Saakviltne as Plan Trustee in May 2014, transferred at least \$6.1 million in Plan assets to himself and/or to entities owned or controlled by Benson and his family members or to third parties for the payment of Benson and his family's personal debts.

WHEREAS the Plan contends that ERG is civilly liable for the losses caused by Benson in its role as Plan Administrator.

WHEREAS ERG denies the contentions of the Plan and any liability to the Plan.

WHEREAS the Plan and ERG have agreed to settle the disputes between them according to the terms of this Agreement with ERG agreeing to pay the Plan the total sum of \$4,515,565.00, plus interest.

THE AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements contained herein, and intending to be legally bound, ERG and the Plan hereby agree as follows:

1. Payments. ERG agrees to pay \$4,515,565.00 in principal to Trustee Nicholas Saakvitne of the Plan. Payments shall be made monthly as set forth in paragraphs 5, 7 and 8 below. The unpaid principal shall accrue interest at the initial rate of 1% per annum beginning on June 1, 2015, and which rate will increase by 1% every two years until reaching 4% per annum on June 1, 2021.

2. Funds With the Court. ERG agrees to immediately confirm and represent to the Government in writing that it releases all claims to the \$321,351.00 that was deposited with the Court in Case No. 13-cv-02979-VC on or about August 20, 2014. ERG understands that these funds will be released to the Plan and made payable to the Plan by the Court in the event that the United States and IRS release their claims against those funds. It is agreed that any amounts actually received by the Plan from the funds held by the Court will be credited against the total amount owed pursuant to this Agreement by ERG.

3. Stipulated Judgment. The Parties agree that the Plan will file a Complaint in the United States District Court for the Northern District of California in the form attached hereto as Exhibit A within thirty (30) days of execution of this Agreement. ERG further hereby waives all defenses to the Complaint and consents to execute a Stipulation for Entry of Judgment and to entry of a Proposed Stipulated Judgment in the form attached hereto as Exhibits B and C. The Stipulated Judgment shall be in the amount of \$4,515,565.00. If the Court refuses to execute the Stipulated Judgment due to any alleged deficiencies in the Complaint as attached hereto and filed with the Court, ERG agrees it will not object to the filing of an Amended Complaint and will take all reasonable steps to cooperate with the Plan in obtaining a Judgment executed by the Court for the agreed upon amount.

The Plan agrees that it will not execute upon the Judgment unless ERG is in default as defined in paragraphs 7 and 8 below. However, the Plan may immediately record the Judgment in whatever jurisdictions it sees fit to establish the priority of its claim. It is further agreed between the parties that the Plan may execute upon the Judgment if ERG fails to make any required monthly payments within forty-one days of the due date.

4. Amounts Owing to the United States/Internal Revenue Service. The Parties understand and acknowledge that there is an Order and Judgment in Case No. 13-cv-02979-CV, "in favor of the United States of America and Against ENERGY RESEARCH & GENERATION, INC., in the amount of \$24,086,135.69, plus statutory interest from March 25, 2013, until paid." The Parties further understand and acknowledge that the IRS has recorded liens against ERG.

5. Agreement to work with the Department of Justice and Internal Revenue Service to Establish Payment Plan. The Parties understand and acknowledge that the agreement of the Department of Justice and the IRS is required as a practical matter in order to establish a monthly payment plan in which ERG makes payments to the Department of Justice / Internal Revenue Service and the Plan. It is anticipated that the Department of Justice and ERG will be stipulating to an Injunction and a Payment Plan with the Internal Revenue Service within the next month. The Parties agree to meet with representatives of the Department of Justice and the Internal Revenue Service to arrive at the amount of the monthly payments that ERG is financially able to make to the Internal Revenue Service and the Plan. The Parties agree that they will work with the IRS to establish a monthly payment amount as soon as possible, and will execute a Supplement to this Settlement Agreement at the time that an agreement upon the monthly payment amounts are reached.

However, the Parties also agree that nothing herein will prohibit the Plan from enforcing the Judgment provided for herein if the Department of Justice and/or the Internal Revenue Service affirmatively refuse to agree to any monthly payments to the Plan.

6. Frank Raskauskas. ERG agrees to continue to make all required pension payments to Plan Participant Frank Raskauskas. After ERG begins making monthly payments in accordance with either Section 5 above or Section 8 below, the payments to Mr. Raskauskas will be credited against the monthly payment owed by ERG. All payments by ERG to Mr. Raskauskas made on behalf of the Plan, including those payments made on behalf of the Plan prior to the date of this Agreement, shall be credited against ERG's total liability under this Agreement of \$4,515,565.00, plus interest.

7. Conditions for Default. Upon the determination of the monthly payment amount to be made to the Internal Revenue Service and the monthly payment amount to be made to the Plan, the monthly payment to the Plan will be due on the first day of every month until payment in full is made. If any monthly payment is not received by the Plan by the 11th day of any month, ERG will be in default. ERG will have the opportunity to cure the default within thirty days, but the Plan is under no obligation to give notice of default.

In the event that a payment is not made by the 11th day of the month, the Plan will meet with ERG and confer in good faith in an attempt to resolve the matter prior to executing on the Judgment. However, if ERG is unable to cure the default within the thirty-day period provided, and the meet and confer discussions between the Plan and ERG do not resolve the matter, the Plan will be entitled to take whatever steps it deems appropriate to enforce the Judgment.

8. Monthly Payment in Lieu of Agreement. If the Parties and the IRS have not agreed to a monthly payment amount within 12 months of the execution of this Agreement, ERG shall begin making monthly payments to the Plan in the amount of either (1) \$10,000 or (2) 50% of the amount by which average monthly revenue for the prior 12 months exceeds average monthly expenses for the prior 12 months, whichever is greater. Payments to the IRS over the prior 12 months shall be included in the calculation of average monthly expenses. The Plan shall have the right to inspect and audit ERG's accounting records until the Parties and the IRS agree on a monthly payment amount to the Plan. The Parties further agree that they will continue to work with the IRS to determine a monthly payment to the Plan approved by the IRS. Upon such

agreement between the Parties and the IRS, the Parties agree to prepare a Supplement to this Agreement amending the monthly payment amount as approved by the IRS.

If any monthly payment due under this Section is not made by the 11th day of any month, ERG will be in default. ERG will have the opportunity to cure the default within thirty days, but the Plan is under no obligation to give notice of default. In the event that a payment is not made by the 11th day of the month, the Plan will meet with ERG and confer in good faith in an attempt to resolve the matter prior to executing on the Judgment. However, if ERG is unable to cure the default within the thirty-day period provided, and the meet and confer discussions between the Plan and ERG do not resolve the matter, the Plan will be entitled to take whatever steps it deems appropriate to enforce the Judgment.

9. Offsets. Except as provided below, the Parties agree that if the Plan recovers a total of \$8 million from all sources, including the amounts received from ERG pursuant to this Agreement, based on or arising out of allegations that Burton Benson misappropriated or improperly used Plan assets, then ERG shall not be required to pay the remaining balance owed under this Agreement at that time and the Stipulated Judgment will be deemed paid in full as of that time. However, any payments received by the Plan relating to its investment in Sargent Ranch shall not be included in the calculation of \$8.0 million in payments to the Plan. (Sargent Ranch refers to real property comprised of 6198 acres, more or less, located in Santa Clara and Santa Cruz Counties and described as Santa Clara County Assessor Parcel Nos. 810-37-006/007/008, 810-38-002/009/014/015/016/017 and 841-36-013 and Santa Cruz Assessor Parcel Nos. 110-201-04, 110-251-06, 110-271-01 and 110-281-01.)

It is agreed between the Parties that \$8.0 million is a negotiated number which the Trustee claims does not represent the full amount of the Plan's loss. Nothing herein shall prevent the Plan from recovering additional amounts in excess of \$8 million from other responsible parties.

10. Waiver and Release. Except as set forth below, upon the final payment provided for herein, the Plan will waive, release, relinquish, acquit, and forever discharge ERG, including its predecessor companies, successor companies, successors-in-interest, any trust that acquires a controlling equity interest in ERG in its capacity as an owner of ERG stock, parent companies, sister companies, attorneys, subsidiary companies, partners, joint venturers, sureties, insurers, lenders, subcontractors, suppliers, assigns, members, managers, directors, officers, employees, agents, servants and affiliates of each of them, of and from any and all claims, demands, rights, liens, claims for relief, actions, causes of action, and the like, of every kind and nature whatsoever, known and unknown, suspected and unsuspected, anticipated and unanticipated, past, present and future, whether arising at law, under a contract, in tort, in equity, or otherwise, for all injuries, economic loss, damages, losses, attorneys' fees, costs, expenses, or otherwise, including without limitation all consequential, general, special, and/or punitive damages, resulting or to result from, or in any way arising out of, related to, or in connection with any and all matters referred to in the pleadings in the cases of *United States v. Benson*, Case No. 12-cr-00480-YGR, *United States v. Benson*, Case No. 14-cv-02071-YGR, and *ERG Aerospace v. United States*, Case No. 13-cv-02973-VC, including, but not limited to, any acts or omissions of Burton Benson prior to the date hereof as Trustee of the Plan. However, nothing herein shall act as a release in any way of Burton Benson, Mark Benson, Eric Benson, or Bradley Benson, their

spouses or heirs, any entities controlled by them (except Energy Research & Generation, Inc. and ERG Aerospace), or any trusts, partnerships, or limited partnerships in which any one of them has an interest.

Upon the full execution of this Agreement, ERG, for itself and its affiliates, agents, attorneys, parent corporations, officers, directors, subsidiaries, sister companies, shareholders and successors-in-interest, hereby releases the Plan and its fiduciaries, agents, attorneys and participants from any and all claims, demands, rights liens, claims for relief, actions, causes of action, and the like, of every kind and nature whatsoever, known and unknown, suspected and unsuspected, anticipated and unanticipated, past, present and future, whether arising at law, under a contract, in tort, in equity, or otherwise, for all injuries, economic loss, damages, losses, attorneys' fees, costs, expenses, or otherwise, including without limitation all consequential, general, special, and/or punitive damages, resulting or to result from, or in any way arising out of, related to, or in connection with any act or omission to the date hereof.

11. Good Faith Compromise and No Admissions. This Agreement is the result of a good faith compromise and settlement of disputed claims and shall not at any time, or for any purpose, be considered an admission of liability or of merit by any Party, or of liability or responsibility of the Parties. The Parties agree that this Agreement may not be offered into evidence in any proceeding in which ERG and/or the Plan are not parties.

12. Further Assurances. The Parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Settlement Agreement. This includes negotiating in good faith the monthly payment to be determined after the initial twelve-month period.

13. Governing Law. This Agreement shall be governed by, construed in and enforced in accordance with the laws of the State of California without regard to choice of law or conflict of law.

14. Amendments. This Agreement may not be modified, amended, or terminated except by an instrument in writing, signed by each of the Parties affected thereby.

15. Waivers. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

16. Voluntary Agreement. The Parties represent that they have carefully read this Agreement, know its contents, and execute the Agreement voluntarily.

17. Severability. If for any reason any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement nevertheless shall be construed, performed, and enforced as if the invalid or unenforceable provision had not been included in the text of the Agreement.

18. Drafting. The drafting and negotiation of this Agreement have been participated in by each of the Parties, and for all purposes, this Agreement shall be deemed to have been drafted jointly by each of the Parties.

19. Counterparts. If this Agreement is executed by signatures transmitted by facsimile or email in counterparts, each counterpart shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on all of the Parties.

20. Entire Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties hereto concerning the subject matter hereof are contained in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning this subject matter hereof are merged herein. This is an Integrated Agreement.

21. Attorneys' Fees and Costs. Provided each Party complies with the terms and conditions of this Agreement, each Party shall bear its own attorney's fees and costs incurred through the execution of this Agreement. In any action or proceeding to enforce the terms of this Agreement or to redress any violation of this Agreement or otherwise resolve any dispute between the Parties arising hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and other legal costs from the other Party.

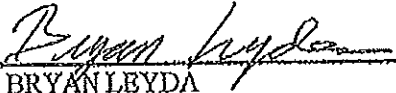
22. Authority. The Parties represent and warrant that they have full power, authority and capacity to execute this Agreement and perform the obligations hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

ENERGY RESEARCH & GENERATION, INC.
PROFIT SHARING PLAN

ENERGY RESEARCH & GENERATION,
INC., ERG AEROSPACE
CORPORATION, and ERG MATERIALS
AND AEROSPACE CORPORATION

By: _____
NICHOLAS SAAKVITNE
Trustee

By: 
BRYAN LEYDA
Acting Chief Executive Officer

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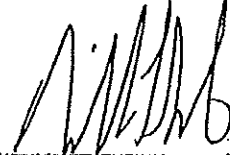
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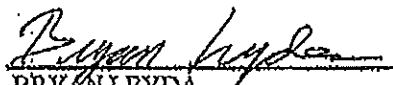
ENERGY RESEARCH & GENERATION, INC.
PROFIT SHARING PLAN

By: 
NICHOLAS SAAKVITNE

Trustee
NICHOLAS L. SAAKVITNE
TRUSTEE OF EMPLOYEE
BENEFIT PLAN

532 Colorado Avenue 2nd Floor
Santa Monica, CA 90401-2408

ENERGY RESEARCH & GENERATION,
INC., ERG AEROSPACE
CORPORATION, and ERG MATERIALS
AND AEROSPACE CORPORATION

By: 
BRYAN LEYDA
Acting Chief Executive Officer

Approved as to form and content:

ALBERT & WILL, LLP

By: *Mitchell Albert 6/26/15*

MITCHELL J. ALBERT, ESQ.
Albert & Will, LLP
2601 Airport Drive, Suite 345
Torrance, CA 90505

Approved as to form and content:

FABIAN AND CLENDENIN, P.C.

By: *JBS 6-25-15*

JEFFREY B. SETNESS, ESQ.
Fabian & Clendenin, P.C.
601 South Tenth Street, Suite 204
Las Vegas, NV 89101

EXHIBIT A

1 MITCHELL J. ALBERT, ESQ. (State Bar No. 119114)
2 ALBERT & WILL, LLP
3 2601 Airport Drive, Suite 345
4 Torrance, CA 90505
5 Tel. (310) 257-9363
6 Fax (310) 257-9360

7 Attorneys for Nicholas Saakvitne,
8 Trustee, Plan Administrator and
9 Independent Fiduciary of the Energy,
10 Research & Generation, Inc. Profit
11 Sharing Plan and Associated Retirement
12 Trust

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

16	NICHOLAS SAAKVITNE, TRUSTEE, PLAN)	CASE NO.
17	ADMINISTRATOR AND INDEPENDENT)	
18	FIDUCIARY OF THE ENERGY, RESEARCH)	COMPLAINT FOR DAMAGES PURSUANT
19	& GENERATION, INC. PROFIT SHARING)	TO 29 U.S.C. §§ 1109 and 1132
20	PLAN AND ASSOCIATED RETIREMENT)	
21	TRUST,)	
22	Plaintiff,)	
23	vs.)	
24	ENERGY, RESEARCH & GENERATION,)	
25	INC., ERG AEROSPACE CORPORATION,)	
26	and ERG MATERIALS AND AEROSPACE)	
27	CORPORATION,)	
28	Defendants.)	

29 Plaintiff Nicholas Saakvitne ("Saakvitne"), Trustee, Plan
30 Administrator and Independent Fiduciary of the Energy, Research &
31 Generation, Inc. Profit Sharing Plan and Associated Retirement Trust
32 ("the Plan") alleges as follows against Defendants ENERGY, RESEARCH
33 & GENERATION, INC., ERG AEROSPACE CORPORATION, and ERG MATERIALS AND
34 AEROSPACE CORPORATION (collectively "ERG");
35 / / /

1 STATUTORY AND REGULATORY FRAMEWORK GOVERNING PENSION PLANS

2 6. ERISA established standards governing the operation of
3 most private-sector employee benefit plans, including pension
4 benefit plans. Pension benefit plans allow employees and their
5 employers to make contributions, generally on a tax-deferred basis,
6 to the employees' retirement fund. 29 U.S.C. § 1002(2)(A).
7 Generally, under ERISA, pension plan contributions must be held in
8 trust. 29 U.S.C. § 1103. When a contribution is made to a plan and
9 placed in trust, the contribution becomes a plan asset. 29 U.S.C. §
10 1102(42); 29 C.F.R. § 2510.3-101 and 102.

11 7. Under ERISA, an employee pension plan is established and
12 maintained pursuant to a written instrument. 29 U.S.C. §
13 1102(a)(1). This written instrument is known as the "plan
14 document." The plan document describes how and when an employee
15 becomes eligible to participate in the plan, how the plan is to be
16 funded (by employee and/or employer contributions), and the benefits
17 provided by the plan. A plan document also describes the roles and
18 duties of the plan's fiduciaries. 29 U.S.C. § 1102(b)-(c),
19 including the plan administrator.

20 8. Generally, a "plan sponsor" establishes an ERISA-covered
21 pension plan by adopting a pension plan document and establishing a
22 trust to hold the plan's assets. 29 U.S.C. §§ 1102(2)&(16), 1103,
23 1104. The plan sponsor also generally uses the plan document to
24 retain its fiduciary authority to appoint the plan administrator,
25 the plan trustee, and other fiduciaries.

26 9. A plan "trustee" is responsible for safeguarding pension
27 plan assets and ensuring that they are invested prudently and in
28

1 conformity with the directives of the trust agreement. 29 U.S.C.
2 § 1104.

3 10. The "plan administrator" is responsible for the day-to-day
4 administration of the plan, including but not limited to, enrollment
5 of new participants, processing distributions to existing
6 participants, and fulfilling the plan's reporting and disclosure
7 requirements. 29 U.S.C. §§ 1002(16)(A), 1021-1031. As part of its
8 affirmative reporting duties, the plan administrator is required to
9 file and publish an accurate and truthful Annual Report Form 5500
10 ("Form 5500") to the U.S. Department of Labor ("DOL"). 29 U.S.C. §§
11 1023-1024, 1027. The plan administrator must provide accurate
12 reports of plan assets and disclose any prohibited transactions on
13 the Form 5500 to the DOL. *See id.*; 29 C.F.R. § 2520.103-1.

14 11. The plan administrator also generally obtains an asset
15 custodian to assist the administrator in holding the plan assets.
16 In the case of the ERG Plan, the Plan Administrator also had a duty
17 to monitor the Trustee, Burton Benson, and the performance of the
18 Plan's portfolio. ERG failed to carry out any of its duties as Plan
19 Administrator, thereby breaching its fiduciary duty to the Plan and
20 allowing Burton Benson to misappropriate millions of dollars from
21 the Plan.

22 12. Because of the nature of the functions they perform, the
23 plan administrator and trustee are "fiduciaries" of the pension plan
24 and its assets. 29 U.S.C. § 1002(21)(A).

25 13. Under ERISA, a fiduciary owes four basic duties to a
26 pension plan and its participants: a duty of loyalty, a duty of
27 prudence, a duty to diversify investments, and a duty to follow the
28 plan documents. Specifically, a fiduciary shall:

- 1 Discharge his duties with respect to a plan solely in the
2 interest of the participants and beneficiaries and
3 (A) for the exclusive purpose of
4 (i) providing benefits to the participants and their
5 beneficiaries, and
6 (ii) defraying the reasonable expenses of administering
7 the plan;
8 (B) with the care, skill, prudence, and diligence under the
9 circumstances then prevailing that a prudent man acting in
10 a like capacity and familiar with such matters would use
11 in the conduct of an enterprise of a like character and
12 with like aims;
13 (C) by diversifying the investments of the plan so as to
14 minimize the risk of large losses, unless under the
15 circumstances it is clearly prudent not to do so; and
16 (D) in accordance with the documents and instruments governing
17 the plan insofar as such documents and instruments are
18 consistent with ERISA.

19 29 U.S.C. § 1104.

20 14. Under ERISA, a fiduciary may not engage in "prohibited
21 transactions" using plan assets, including self-dealing.
22 Specifically, a fiduciary "shall not cause the plan to engage in a
23 transaction, if he knows or should know that such transaction
24 constitutes a direct or indirect . . . lending of money or other
25 extension of credit between the plan and a party-in-interest . . .
26 [or] transfer to, or use by or for the benefit of, a party-in-
27 interest, of any assets of the plan." 29 U.S.C. § 1106. Further,
28

1 under ERISA, a fiduciary "shall not . . . deal with the assets of
2 the plan in his own interest or for his own account." *Id.*

3 15. Under ERISA, a "party-in-interest" includes certain
4 relatives of a fiduciary and any employee of the employer who
5 sponsored the plan. 29 U.S.C. § 1002(14)(F)&(H).

6 FACTUAL ALLEGATIONS

7 16. ERG is a California corporation with offices located at
8 900 Stanford Avenue, Oakland, California. ERG was founded in 1967
9 and was the originator of various materials that are utilized in the
10 aerospace, defense and scientific industries. ERG was known as
11 Energy, Research and Generation, Inc. until approximately 2006, at
12 which point the business was reincorporated as ERG Aerospace
13 Corporation. On information and belief, both companies now do
14 business as ERG Materials and Aerospace Corporation.

15 17. Benson was the President of ERG until approximately 2008
16 and was Chief Executive Officer of ERG through at least February
17 2014.

18 18. ERG sponsors the Plan. The Plan was made effective
19 January 1, 1977, as a pension plan to provide retirement benefits to
20 the employees of ERG. ERG as the Plan's sponsor created the Plan by
21 adopting the plan document and establishing a trust to hold the
22 Plan's assets. As the Plan's sponsor, ERG had the power to appoint
23 the plan administrator, the plan trustee, and other fiduciaries.

24 19. The Plan is a covered pension plan pursuant to 29 U.S.C.
25 § 1002. Like ERG, the Plan maintained a business address of 900
26 Stanford Avenue, Oakland, California. The Plan currently has 26
27 participants.

28

1 20. The Plan is subject to ERISA's standards governing the
2 operation of most private-sector employee benefit plans, including
3 pension benefit plans.

4 21. On December 28, 1994, and again on May 28, 2002, Benson
5 accepted the appointment as the sole, discretionary trustee of the
6 Plan under the terms of the Plan Document and was empowered by the
7 Plan Document to hold title to and direct the investment of the
8 Plan's assets for the sole benefit of the Plan's participants and
9 beneficiaries. As the pension plan's trustee, Benson is responsible
10 for safeguarding the Plan assets and ensuring that they are invested
11 prudently and in conformity with the directives of the Plan
12 Document.

13 22. During all time material to this Complaint, ERG was the
14 duly appointed Plan Administrator to the Plan.

15 23. On or around September 6, 1985, Benson opened the B.O.
16 Benson, Trustee, ERG Retirement Trust custodial account with
17 Vanguard ("Plan Vanguard Account") to hold the Plan's assets.

18 24. The Plan Vanguard Account is included among the Plan's
19 liquid assets. On December 31 for each Plan year from 2010 through
20 2012, Vanguard reported the Plan Vanguard Account holdings totaled
21 \$905,617 (2010), \$623,467 (2011), and \$7,315 (2012), for the
22 respective Plan years.

23 25. According to the Form 5500 filed on behalf of the Plan, as
24 of Plan year 2009, the Plan contained a reported asset base of
25 \$9,744,757. As of April 2014, the Plan had no remaining liquid
26 assets in the known custodial accounts held at Vanguard, Charles
27 Schwab and Company, and Bank of St. Croix, a bank insured by the
28

1 Federal Deposit Insurance Corporation ("FDIC") in the U.S. Virgin
2 Islands.

3 26. Beginning at least as early as July 2005, Benson devised a
4 scheme to transfer funds from the Plan Vanguard Account for his own
5 personal benefit and the benefit of his family. From at least 2005
6 to 2013, Benson transferred at least \$6.1 million in Plan assets to
7 entities owned or controlled by Benson or to third parties for
8 payment of Benson's and his family's personal debts. Benson thus
9 engaged in prohibited transactions using Plan assets.

10 27. Benson's conduct has resulted in an indictment by the
11 United States Government. The criminal case against Benson
12 currently is pending before the District Court for the Northern
13 District of California. (*USA v. Burton Orville Benson*, Case No.
14 CRIZ-00480-YGR.)

15 28. The United States also filed a civil action against
16 Benson. (*USA v. Burton Orville Benson*, Case No. 14-cv-2071-YGR.) A
17 copy of the Government's Complaint is attached hereto as Exhibit A
18 and the allegations therein are incorporated by reference as though
19 set forth in full herein.

20 29. In furtherance of the scheme, Benson represented to Plan
21 participants that the Plan's assets included investments in multiple
22 non-qualifying assets. Non-qualifying assets are assets in which
23 ERISA plans like the Plan are permitted to invest, but only if the
24 Plan's administrator and trustee adhere to specific heightened
25 reporting or binding requirements set forth under ERISA regulations.
26 See 29 C.F.R. 2520.104-146. In the case of the Plan, Benson
27 represented that the Plan used the liquid assets in the Plan
28 Vanguard Account to make a number of real estate and commercial

1 investments through entities located in California, Nevada, and the
2 U.S. Virgin Islands. Benson further represented to the Plan
3 participants that the investments were secured by first and second
4 position Deeds of Trust filed on the investment properties.

5 30. ERG, as Plan Administrator, did not properly record or
6 otherwise document the Plan's interest in any of the non-qualifying
7 assets. ERG also failed to comply with the heightened reporting and
8 bonding requirements under ERISA with respect to the Plan's non-
9 qualifying assets. ERG's failure to follow these requirements put
10 the Plan at risk for unbonded losses. As Plan Administrator, ERG is
11 also responsible for the false Forms 5500 which Benson filed with
12 the Department of Labor.

13 31. ERG also failed to fulfill its duty under the Plan
14 Document to monitor Benson's performance as Trustee and to monitor
15 the performance of the Plan's portfolio or to discover that Benson
16 used the Plan's portfolio to engage in prohibited transactions.
17 ERG's failure to take the steps required of it as Plan Administrator
18 allowed Benson to carry on his fraudulent scheme without detection
19 over a period of many years and constituted a breach of its
20 fiduciary duties. ERG, as Plan Administrator, had actual knowledge
21 of Benson's misdeeds as Trustee because Benson was also the CEO of
22 ERG and purported to act for ERG in its role as Plan Administrator.

23 FIRST CAUSE OF ACTION

24 (For Violations of 29 U.S.C. §§ 1132 and 1109)

25 32. Plaintiff reasserts and realleges each and every
26 allegation contained in paragraphs 1 through 31 as if fully set
27 forth herein.

28

1 33. As set forth above, ERG failed to satisfy its fiduciary
2 duties to the Plan in its role as Plan Administrator. In that
3 regard, ERG failed to comply with the specific heightened reporting
4 requirements for non-qualifying investments made by Benson using
5 Plan assets, further failed to satisfy bonding requirements, and
6 failed to ensure that the Plan received an interest in a
7 corresponding asset when its funds were used on behalf of Benson.
8 Nor did ERG properly account for such transactions or properly
9 prepare Forms 5500 to be provided to the Department of Labor.

10 34. Furthermore, ERG, in its role as Plan Administrator, also
11 failed to properly account for those transactions whereby Benson
12 simply misappropriated Plan assets for his own benefit and failed to
13 make any investment on behalf of the Plan. ERG, as Plan
14 Administrator, failed to comply with its duty pursuant to the Plan
15 Document, to monitor Benson's conduct as Trustee, or to monitor the
16 investment portfolio.

17 35. By failing to comply with its fiduciary duties, ERG, in
18 its role as Plan Administrator, enabled Benson to conceal his
19 misappropriation of Plan assets and to engage in a continuing course
20 of conduct to misappropriate Plan assets for a period of at least
21 seven years. ERG's conduct caused the Plan to lose at least \$6.1
22 million, plus interest from the date of the various fraudulent
23 transactions.

24 36. As a result of its breach of fiduciary duty, ERG is liable
25 to the Plan for all of the losses it suffered thereby pursuant to 29
26 U.S.C. §§ 1109 and 1132.

27 WHEREFORE, the Plan prays for judgment against Defendants on
28 the sole cause of action alleged herein as follows:

- 1 1. For the sum of no less than \$6.1 million, plus interest at
2 the legal rate, which amount represents the funds misappropriated
3 from the Plan;
- 4 2. For the payment of all Court costs, expenses, and
5 attorneys' fees incurred in bringing this action, pursuant to 29
6 U.S.C. § 1132(g); and
- 7 3. For such other legal or equitable relief as this Court
8 deems just and appropriate.

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DATED: June _____, 2015 ALBERT & WILL, LLP

By: _____
MITCHELL J. ALBERT, ESQ,
Attorneys for Nicholas Saakvitne,
Trustee, Plan Administrator and
Independent Fiduciary of the
Energy, Research & Generation,
Inc. Profit Sharing Plan and
Associated Retirement Trust

EXHIBIT B

1 MITCHELL J. ALBERT, ESQ. (State Bar No. 119114)
2 ALBERT & WILL, LLP
3 2601 Airport Drive, Suite 345
4 Torrance, CA 90505
5 Tel. (310) 257-9363
6 Fax (310) 257-9360

7 Attorneys for Nicholas Saakvitne,
8 Trustee, Plan Administrator and
9 Independent Fiduciary of the Energy,
10 Research & Generation, Inc. Profit
11 Sharing Plan and Associated Retirement
12 Trust

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

15 NICHOLAS SAAKVITNE, TRUSTEE, PLAN) CASE NO.
16 ADMINISTRATOR AND INDEPENDENT)
17 FIDUCIARY OF THE ENERGY, RESEARCH) STIPULATION FOR ENTRY OF
18 & GENERATION, INC. PROFIT SHARING) JUDGMENT
19 PLAN AND ASSOCIATED RETIREMENT)
20 TRUST,)
21 Plaintiff,)
22 vs.)
23 ENERGY, RESEARCH & GENERATION,)
24 INC., ERG AEROSPACE CORPORATION,)
25 and ERG MATERIALS AND AEROSPACE)
26 CORPORATION,)
27 Defendants.)

28 IT IS HEREBY STIPULATED between Plaintiff NICHOLAS SAAKVITNE,
29 TRUSTEE, PLAN ADMINISTRATOR AND INDEPENDENT FIDUCIARY OF THE ENERGY,
30 RESEARCH & GENERATION, INC. PROFIT SHARING PLAN AND ASSOCIATED
31 RETIREMENT TRUST ("the Plan"), on the one hand, and Defendants
32 ENERGY, RESEARCH & GENERATION, INC., ERG AEROSPACE CORPORATION, and
33 ERG MATERIALS AND AEROSPACE CORPORATION (collectively, ERG), on the
34 other, as follows:

1 1. On or about July 1, 2015, Plaintiff filed the Complaint
2 herein alleging Defendants breached their fiduciary duty to the Plan
3 as the Plan Administrator by failing to fulfill its reporting and
4 disclosure requirements, filing false and misleading Forms 5500 with
5 the Department of Labor, failing to comply with the heightened
6 reporting requirements for non-qualified assets, failing to obtain a
7 bond with respect to non-qualifying assets, and thereby enabled and
8 assisted Burton Benson, the former Plan Trustee, in misappropriating
9 at least \$6.1 million from the Plan.

10 2. On or about June 20, 2015, Plaintiff and Defendants
11 executed a Settlement Agreement providing, among other things, that
12 judgment shall be entered in favor of Plaintiff and against
13 Defendants in the amount of \$4,515,565.00.

14 3. In order to avoid the expense and risk of litigation,
15 Plaintiff and Defendant hereby stipulate that the Court may
16 forthwith enter Judgment in favor of Plaintiff and against
17 Defendants. Attached hereto as Exhibit A is the Proposed Stipulated
18 Judgment.

19 DATED: June _____, 2015

THE ENERGY, RESEARCH & GENERATION, INC.
PROFIT SHARING PLAN AND ASSOCIATED
RETIREMENT TRUST

21
22 By:

NICHOLAS SAAKVITNE
Trustee, Plan Administrator and
Independent Fiduciary

23
24 DATED: June 25, 2015

ENERGY, RESEARCH & GENERATION, INC.,
ERG AEROSPACE CORPORATION, and ERG
MATERIALS AND AEROSPACE CORPORATION

25
26
27 By:

Bryan Leyda
BRYAN LEYDA
Acting Chief Executive Officer

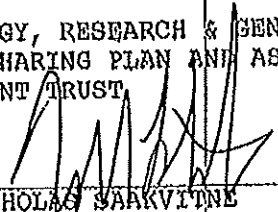
1 1. On or about July 1, 2015, Plaintiff filed the Complaint
2 herein alleging Defendants breached their fiduciary duty to the Plan
3 as the Plan Administrator by failing to fulfill its reporting and
4 disclosure requirements, filing false and misleading Forms 5500 with
5 the Department of Labor, failing to comply with the heightened
6 reporting requirements for non-qualified assets, failing to obtain a
7 bond with respect to non-qualifying assets, and thereby enabled and
8 assisted Burton Benson, the former Plan Trustee, in misappropriating
9 at least \$6.1 million from the Plan.

10 2. On or about June 20, 2015, Plaintiff and Defendants
11 executed a Settlement Agreement providing, among other things, that
12 judgment shall be entered in favor of Plaintiff and against
13 Defendants in the amount of \$4,515,565.00.

14 3. In order to avoid the expense and risk of litigation,
15 Plaintiff and Defendant hereby stipulate that the Court may
16 forthwith enter judgment in favor of Plaintiff and against
17 Defendants. Attached hereto as Exhibit A is the Proposed Stipulated
18 Judgment.

19 DATED: June 25, 2015
20 NICHOLAS L. SAAKVITNE
21 TRUSTEE OF EMPLOYEE
22 BENEFIT PLAN
23 532 Colorado Avenue 2nd Floor
24 Santa Monica, CA 90401-2408

THE ENERGY, RESEARCH & GENERATION, INC.
PROFIT SHARING PLAN AND ASSOCIATED
RETIREMENT TRUST

By: 
NICHOLAS SAAKVITNE
Trustee, Plan Administrator and
Independent Fiduciary

25 DATED: June 25, 2015

ENERGY, RESEARCH & GENERATION, INC.,
ERG AEROSPACE CORPORATION, and ERG
MATERIALS AND AEROSPACE CORPORATION

26
27 By: 
BRL BRYAN LEYDA
28 Acting Chief Executive Officer

EXHIBIT A

1 MITCHELL J. ALBERT, ESQ. (State Bar No. 119114)
2 ALBERT & WILL, LLP
2601 Airport Drive, Suite 345
3 Torrance, CA 90505
Tel. (310) 257-9363
4 Fax (310) 257-9360

5 Attorneys for Nicholas Saakvitne,
Trustee, Plan Administrator and
6 Independent Fiduciary of the Energy,
Research & Generation, Inc. Profit
7 Sharing Plan and Associated Retirement
Trust

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION
11

12 NICHOLAS SAAKVITNE, TRUSTEE, PLAN) CASE NO.
ADMINISTRATOR AND INDEPENDENT)
13 FIDUCIARY OF THE ENERGY, RESEARCH) STIPULATED JUDGMENT
& GENERATION, INC. PROFIT SHARING)
14 PLAN AND ASSOCIATED RETIREMENT)
TRUST,)
15 Plaintiff,)
16 vs.)
17 ENERGY, RESEARCH & GENERATION,)
INC., ERG AEROSPACE CORPORATION,)
18 and ERG MATERIALS AND AEROSPACE)
CORPORATION,)
19 Defendants.)
20

21
22 In the above-entitled cause, Plaintiff NICHOLAS SAAKVITNE,
23 TRUSTEE, PLAN ADMINISTRATOR AND INDEPENDENT FIDUCIARY OF THE ENERGY,
24 RESEARCH & GENERATION, INC. PROFIT SHARING PLAN AND ASSOCIATED
25 RETIREMENT TRUST and Defendants ENERGY, RESEARCH & GENERATION, INC.,
26 ERG AEROSPACE CORPORATION, and ERG MATERIALS AND AEROSPACE
27 CORPORATION (collectively, ERG), have stipulated that judgment may
28 be entered in favor of Plaintiff and against Defendants in the sum

1 of \$4,515,565.00, plus interest at the rate of 1% per annum
2 beginning on June 1, 2015, which interest rate will increase by 1%
3 every two years until reaching a rate of 4% on June 1, 2021.

4 IT IS HEREBY ORDERED that Judgment is hereby entered in favor
5 of Plaintiff NICHOLAS SAAKVITNE, TRUSTEE, PLAN ADMINISTRATOR AND
6 INDEPENDENT FIDUCIARY OF THE ENERGY, RESEARCH & GENERATION, INC.
7 PROFIT SHARING PLAN AND ASSOCIATED RETIREMENT TRUST and against
8 Defendants ENERGY, RESEARCH & GENERATION, INC., ERG AEROSPACE
9 CORPORATION, and ERG MATERIALS AND AEROSPACE CORPORATION in the sum
10 of \$4,515,565.00, plus interest at the rate of 1% per annum
11 beginning on June 1, 2015, which interest rate will increase by 1%
12 per annum every two years until reaching an interest rate of 4% on
13 June 1, 2021.

14

15 DATED: _____, 2015

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JUDGE OF THE DISTRICT COURT

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EXHIBIT 2

	12/31/2012 "Virtual Acct Balance"	Percentage of "Virtual Account Balance"	Total of Funds Offered to Participants thru 8/4/2017	Total Paid thru 8/4/2017 (cash & loan)	Available Portion of Previously Offered Funds to Participant	Notes
PARTICIPANT NAME						

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

EXHIBIT 3

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2 2601 Airport Drive, Suite 345
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malbert@awllp.com

4
5 Attorneys for Nicholas Saakvitne, Trustee,
Plan Administrator and Independent Fiduciary of
6 the Energy Research & Generation, Inc. Profit
Sharing Plan and Associated Retirement Trust

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,
12 Plaintiff,

13 vs.

14 BURTON ORVILLE BENSON,
15 Defendant.

16 NICHOLAS SAAKVITNE, Trustee, ERG Profit
17 Sharing Plan

18 Plaintiff,

19 vs.

20 BURTON ORVILLE BENSON,
21 Defendant.

) 14-cv-2071 YGR
) [And Related Actions]

) STIPULATION AND [PROPOSED] ORDER

) 15-cv-5091 YGR

22 IT IS HEREBY STIPULATED AND AGREED between the United States of America,
23 Nicholas Saakvitne ("Saakvitne"), as Trustee, Plan Administrator, and Independent Fiduciary
24 of the Energy Research and Generation, Inc. Profit Sharing Plan and Associated Retirement
25 Trust ("the Plan"), Energy Research and Generation, Inc. and ERG Aerospace (collectively
26 "ERG"), Bryan Leyda ("Leyda"), Evelyn Hermsmeier ("Hermsmeier"), Antonio Gomez, Berry
27 Seamon, David Crotzer, Ernie Ward, Noel Crisolo, Melody Carter, Logan Thiesen, Edward

1 Clark, Robert Perez and Stephen Dyer, by and through their respective counsel of record, as
2 follows:

3 1. The Parties hereto wish to resolve all claims asserted in or related to the
4 following pending cases: *United States of America v. Burton Benson*, Case No. 14-cv-2071-
5 YGR; and *Saakvitne v. Benson*, Case No. 15-cv-5091-YGR (“the Burton Benson Litigation”).

6 2. The Parties hereto, including the participants in the Plan, and Elizabeth Benson
7 have reached a Settlement Agreement (“the Agreement”) resolving all claims asserted in or
8 arising out of the Burton Benson Litigation, contingent upon the Court executing the attached
9 Order. The Agreement is attached hereto as Exhibit A and is incorporated by reference
10 herein.(Exhibit 2 to the Settlement Agreement, which sets forth participant balances and
11 percentage interests in the Plan, is not attached to the version attached to this Stipulation and
12 [Proposed] Order to protect the privacy of the participants and will be provided privately to the
13 Court.) The signatories to the Agreement have submitted to the jurisdiction of this Court for
14 the purposes of the attached Order.

15 3. ERG shall make payments to the Plan in accordance with Paragraph 1 of the
16 Settlement Agreement.

17 4. In accordance with Paragraph 2 of the Agreement, the Plan shall transfer to ERG
18 any and all right, title or interest the Plan may have in the following: (1) the Plan’s interest in
19 Sargent Ranch Partners, LLC (“the Sargent Ranch Units”); (2) the Plan’s interest in or claims
20 against real property in the U.S. Virgin Islands, including the properties located at 3 King
21 Cross and 254 Estate Glynn (“the Virgin Islands Properties”); (3) the Plan’s interest, if any, in
22 Acacia Properties, LLC, dba Benson Properties, Ltd., including, but not limited to, the
23 properties located at 189 Ivy Drive, Orinda, California; 266 Elsie Drive, Danville, California;
24 3341 N. Lucille Lane, Lafayette, California; 7 Mount Pleasant, St. Croix; 3 Arroyo Drive,
25 Orinda, California (subject to a claim by Evelyn Hermsmeier that she owns 3 Arroyo Drive);
26 143 Alice Lane, Orinda, California, subject to all liens and encumbrances against the
27 properties; and (4) the Plan’s interest in or claim to the real property located at 15260 S. Shore
28 Drive, Truckee, California (“the Donner Lake Property”).

1 5. The Parties, including the United States and the Department of Labor, also agree
2 that the transactions described in Paragraph 2 of the Agreement are exempt from the prohibited
3 transaction provisions of *ERISA* §406(a)(1)(A) [29 U.S.C. §1106(a)(1)(A)] pursuant to
4 Prohibited Transaction Class Exemption 1994-71. (Exemption 94-71). The Parties,
5 specifically including the United States and the United States Department of Labor, further
6 agree that the installment payments by ERG to the Plan in exchange for the transfer of property
7 referred to above also are exempt from the prohibited transaction provisions of *ERISA*
8 §406(a)(1)(A) [29 U.S.C. §1106(a)(1)(A)] pursuant to Prohibited Transaction Class Exemption
9 94-71.

10 6. The Agreement and this Stipulation are contingent upon satisfaction of the
11 conditions set forth in Paragraphs 5 and 6 of the Agreement relating to the Department of
12 Justice Tax Division and California Franchise Tax Board.

13 7. The Parties have agreed that the cases of *United States of America v. Burton*
14 *Benson*, Case No. 14-cv-2071-YGR; and *Saakvitne v. Benson*, Case No. 15-cv-5091-YGR
15 shall be dismissed with prejudice upon the effective date of the Agreement; however, the Court
16 will retain jurisdiction to enforce the Agreement and this Stipulation and Order until ERG
17 completes all of its obligations under the Agreement and this Stipulation. Nicholas Saakvitne,
18 the Trustee appointed by the Court, should be removed upon the effective date of the
19 appointment of a new Trustee.

20 8. The Parties have agreed that the Plan will pay Elizabeth Benson \$12,000 per
21 month for 21 months or until her death, whichever comes first, in full satisfaction of Burton
22 Benson's interest in the Plan and of his beneficiary's and/or heirs' interest in the Plan. The
23 Parties also have agreed to the entry of a Court Order forfeiting Burton Benson's participant
24 interest in the Plan in excess of the amount to be paid to Elizabeth Benson.

25 9. The Parties have agreed that the Civil Forfeiture Agreements entered into by
26 Bradley Benson and Eric Benson are declared null and void. However, Bradley Benson will
27 cooperate to transfer good title to the Donner Lake Property to the Plan, subject to transfer
28 thereafter to ERG.

1 10. The Plan has agreed to pay Evelyn Hermsmeier \$250,000 and ERG has agreed to
2 pay her \$200,000 in full satisfaction of her claims relating to the ERG Ford Trust. The Parties
3 have agreed that all assets nominally held in the name of the alleged ERG Ford Trust are assets
4 of the Plan and are to be deemed transferred to the Plan.

5 11. The Parties have agreed to release all claims against each other as set forth in
6 Sections 15 through 17 of the Agreement. The Parties have agreed that the Plan will release
7 any security interests in the properties mentioned in Paragraphs 2 and 18 of the Agreement in
8 accordance with the terms set forth in Paragraph 18 of the Agreement.

9 12. At the time of the transfer of the Sargent Ranch Units, ERG has agreed it will
10 pledge those Units to the Plan in accordance with the provisions of the California *Uniform*
11 *Commercial Code*. The pledge will be released by the Plan in accordance with the terms of the
12 Agreement.

13 13. At the time of the transfer of the Donner Lake Property, ERG has agreed that it
14 will provide the Plan with a first deed of trust or other appropriate lien against the Donner
15 Lake Property. The Plan will release the deed of trust or lien in accordance with the terms of
16 the Agreement.

17 14. As part of the Agreement, the Plan has agreed to transfer to ERG the Plan's
18 interests in properties located at 3 King Cross and 254 Estate Glynn in the Virgin Islands,
19 which interests currently are being foreclosed upon by the Plan. ERG has agreed that upon
20 successful completion of the foreclosure lawsuit, ERG will provide the Plan with first position
21 liens against 3 King Cross and 254 Estate Glynn upon ERG taking ownership of the properties.
22 The Plan will release the deed of trust or lien in accordance with the terms of the Agreement. If
23 the properties are sold to a higher bidder at the foreclosure auction, the foreclosure proceeds
24 will be delivered directly from escrow to the Plan and will be applied against the balance owed
25 pursuant to the Agreement.

26 15. The Parties also have agreed that if ERG sells any of the properties referred to in
27 Paragraph 2 of the Agreement before ERG has paid the Plan the full amount due pursuant to
28

1 the Agreement, then ERG will transfer the net proceeds to the Plan directly from escrow, until
2 the full amount of \$3,250,000, plus interest, has been paid to the Plan.

3 16. In the event of a default by ERG, and the failure of ERG to cure that default
4 within 60 days, the Plan may take whatever steps it deems appropriate to enforce and/or
5 foreclose on its security interests in the Sargent Ranch Units, the Donner Lake Property and/or
6 the Virgin Islands Properties.

7 17. The Parties have agreed that distributions to the participants in the Plan will be
8 paid in accordance with Exhibit 2 to the Settlement Agreement, and that all partial
9 distributions will be made *pro rata* based on Exhibit 2 to the Settlement Agreement.

10
11 Fabian VanCott

Dated: SEPT 20, 2017

12 By: 

13 Jeffrey B. Setness
14 Attorneys for Energy Research Generation,
15 Inc. and ERG Aerospace

16 Boersch Shapiro LLP

Dated: _____

17 By: _____

18 David W. Shapiro
19 Attorneys for Intervenor/Participant Bryan
20 Leyda, Interested Party/Participant Evelyn
21 Hermsmeier and Participants Antonio
22 Gomez, Berry Seamon, David Crotzer,
Ernie Ward, Noel Crisolo, Melody Carter,
Logan Thiesen, Edward Clark, Robert
Perez, and Stephen Dyer

23 Albert & Will, LLP

Dated: September 20, 2017

24 By: 

25 Mitchell J. Albert
26 Attorneys for Nicholas Saakvitne, Trustee

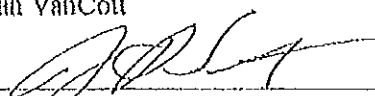
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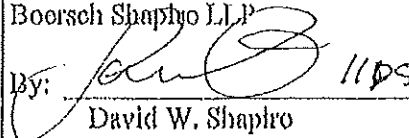
10 Fabian VanCott

Dated: SEPT 20, 2017

11 By: 
12 Jeffrey B. Sotness
13 Attorneys for Energy Research Generation,
14 Inc. and ERG Aerospace
15

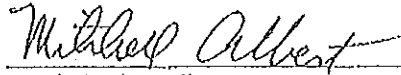
16 Boersch Shapiro LLP

Dated: 11/8/2017

17 By: 
18 David W. Shapiro
19 Attorneys for Intervenor/Participant Bryan
20 Leyda, Interested Party/Participant Evelyn
21 Hornsmeier and Participants Antonio
22 Gomez, Berry Seamon, David Crozier,
Ernie Ward, Noel Crisolo, Melody Carter,
Logan Thlesen, Edward Clark, Robert
Perez, and Stephen Dyer

23 Albert & Will, LLP

Dated: September 20, 2017

24 By: 
25 Mitchell J. Albert
26 Attorneys for Nicholas Sankvitne, Trustee
27
28

1 Brian C. Stretch
2 United States Attorney

Dated: September 21, 2017

3 By: Jillie Reagin
4 Jille C. Reagin
5 Assistant United States Attorney
6 Attorneys for Plaintiff United States of
7 America

8 ORDER

9 Having reviewed the Stipulation of the Parties, and good cause appearing, IT IS
10 HEREBY ORDERED as follows:

11 1. The case of *United States of America v. Benson*, Case No. 14-cv-2071-YGR, is
12 hereby dismissed with prejudice.

13 2. The case of *Saakvitne v. Benson*, Case No. 15-cv-5091-YGR, is dismissed with
14 prejudice. However, the Court retains jurisdiction to enforce the Agreement (Exhibit A hereto)
15 and this Stipulation and Order until ERG completes all of its obligations under the Agreement
16 and this Stipulation and Order.

17 3. The Court hereby orders that all assets nominally in the name of the alleged ERG
18 Ford Trust are assets of the Plan, and are hereby deemed transferred to the Plan. Evelyn
19 Hermsmeier will cooperate with the Plan and will execute any documents necessary to
20 formally transfer assets of the ERG Ford Trust to the Plan. Except as provided in Paragraph 10
21 of this Stipulation, it is hereby ordered that Hermsmeier has no further interest in the ERG
22 Ford Trust or assets nominally in its name.

23 4. Except as provided in Paragraph 8 of this Stipulation, the Court hereby orders
24 pursuant to 26 U.S.C. §401(n)(13)(C)(ii) and 29 U.S.C. §1056(d)(4)(B) that Burton Benson's
25 interest as a participant in the Plan and that of his beneficiaries and/or heirs is hereby forfeited
26 due to Burton Benson's fiduciary breaches as Trustee of the Plan

1 5. The Court hereby finds that the transfers by the Plan to ERG of property or of
2 claims to or interests in property described in Paragraph 4 of the attached Stipulation are
3 exempt from the prohibited transactions provisions of *ERISA* [29 U.S.C. §1106(a)] pursuant to
4 Prohibited Transaction Class Exemption 1994-71. The transactions provided for in the
5 Agreement are the following: the transfer of (1) the Plan's interest in Sargent Ranch Partners,
6 LLC ("the Sargent Ranch Units"); (2) the Plan's interest in or claims against real property in
7 the U.S. Virgin Islands, including the properties located at 3 King Cross and 254 Estate Glynn
8 ("the Virgin Islands Properties"); (3) the Plan's interest, if any, in Acacia Properties, LLC, dba
9 Benson Properties, Ltd., including, but not limited to, the properties located at 189 Ivy Drive,
10 Orinda, California; 266 Elsie Drive, Danville, California; 3341 N. Lucille Lane, Lafayette,
11 California; 7 Mount Pleasant, St. Croix; 3 Arroyo Drive, Orinda, California (subject to a claim
12 by Evelyn Hermsmeier that she owns 3 Arroyo Drive); 143 Alice Lane, Orinda, California,
13 subject to all liens and encumbrances against the properties; and (4) the Plan's interest in or
14 claim to the real property located at 15260 S. Shore Drive, Truckee, California ("the Donner
15 Lake Property"). The Court hereby also finds that the installment payments by ERG to the
16 Plan in exchange for the transfer of the properties referred to above are exempt from the
17 prohibited transactions provisions of *ERISA* [29 U.S.C. §1106(a)] pursuant to Prohibited
18 Transaction Class Exemption 1994-71.

19 6. Thomas Dillon is hereby appointed as the new Trustee of the Plan in place of
20 Nicholas Saakvitne ("Saakvitne"), and Saakvitne is hereby immediately relieved of all of his
21 duties to the Plan.

22 7. Distributions by the new Trustee to the participants will be made in accordance
23 with the Settlement Agreement.

24 8. In the event of a default by ERG with respect to its obligations to the Plan
25 pursuant to the Settlement Agreement ("the Agreement") and/or this Stipulation, and the
26 failure to cure that default within 60 days, the Plan may take whatever steps it deems
27 appropriate to enforce or foreclose on its security interests in the Sargent Ranch Units, the
28 Donner Lake Property and/or the Virgin Islands Properties.

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IT IS SO ORDERED.

Dated: _____

Hon. Yvonne Gonzalez Rogers
Judge of the United States District Court