IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01382-CMA

JOSEPH SANCHEZ, on behalf of himself and all similarly situated persons,

Plaintiff,

v.

PALLADIUM EQUITY PARTNERS, LLC; Q'MAX SOLUTIONS INC.; Q'MAX AMERICA INC.; PATRIOT SOLIDS CONTROL; and PATRIOT DRILLING SOLUTIONS,

Defendants.

PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION OF THE FLSA CLAIM

Pursuant to Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), Plaintiff Joseph Sanchez respectfully moves for entry of an order conditionally certifying a Fair Labor Standards Act ("FLSA") collective comprised of all individuals who, during any time within the past three years, worked for some or all of the Defendants[1] in the United States and were classified as non-employees pursuant to either any version of the attached Master Service Agreement (Exhibit C) or any similar contract.[2] Granting this motion will enable members of the FLSA collective to promptly

[1] Defendants in this case are Palladium Equity Partners, LLC ("Palladium"), Q'Max Solutions Inc. ("Q'Max Solutions"), Q'Max America Inc. ("Q'Max America"), Patriot Solids Control ("Patriot Solids"), and Patriot Drilling Fluids ("Patriot Drilling"). These entities are collectively referred to as "Defendants."

[2] On September 13, 2017, Plaintiff's counsel sent an email to Defendants' counsel pursuant to L.R. 7.1 seeking Defendants' concurrence in this motion. The parties then spoke by phone about this anticipated motion on September 15, 2017 and a follow-up email was sent by Plaintiff's counsel on September 20, 2017. However, as of the time

learn about this lawsuit by receiving the Notice form attached as Exhibit A and, if they wish, join the lawsuit by returning the Consent to Join form attached as Exhibit B.

As this Court has observed, "[t]he standard at the Notice juncture is a 'fairly lenient' one, and usually results in conditional certification." *Avendano v. Averus, Inc.*, 2015 WL 1529354, *4 (D. Colo. March 31, 2015) (Arguello, J.). Here, the fairly lenient standard is satisfied for the reasons described below:

I. FACTUAL ALLEGATIONS AND COMMON EVIDENCE

Defendants own and operate oil and gas industry service companies that provide, *inter alia*, individuals to work at their clients' oil and gas rigs and facilities. *See* Amended Complaint (Doc. 18) at ¶ 15. During the time period relevant to this lawsuit, Defendants employed individuals described as non-employee "consultants," "contractors," or "independent contractors" (collectively "Consultants") who worked for Defendants pursuant to a Master Service Agreement, *see*, *e.g.*, Exhibit C, or a similar contract. *See* Amended Complaint (Doc. 18) at ¶ 16.[3] The Master Service Agreement dictates that Consultants will be paid on a day-rate basis for their work and are uniformly classified by Defendants as non-employee independent contractors. *See* Exhibit C at §§ 3, 7.

The Master Service Agreement, however, is not the only uniform corporate policy that Defendants require their Consultants to adhere to. Defendants generally require

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of filing, Defendants have yet to respond to Plaintiff's request for concurrence in this motion.

[3] These individuals hold various job titles such as, for example, "Solid Control Technicians" and "Mud Engineers." *Id.* at ¶ 19.

Consultants to abide by the same corporate mandates and policies that apply to employees. For example, even though Mr. Sanchez was a Consultant, Patriot Solids issued to him a written "Disciplinary Program" that makes various references to Patriot Drilling, and, more importantly, is applicable to *both* employees and Consultants. *See* Exhibit D. Similarly, Patriot Solids issued "Stop Work Authority Program" and "Drug & Alcohol Policy" documents and Patriot Drilling issued an "Accident Reporting" policy. See Exhibits E-G. Importantly, these policies expressly apply to ***both*** employees and Consultants. *Id.*

Consultants were also issued company policy documents by Defendants that refer exclusively to "employees." These include documents issued by Q'Max America entitled: "Acknowledgment Regarding Trade Secrets and Prior Agreements Limiting Competition;" "Confidentiality, Non-Compete and Non-Solicitation Agreement;" and "Disclosure and Consent to Obtain Employee Information." *See* Exhibits H-J.

These policy documents support Mr. Sanchez's assertion that he and other Consultants were actually "employees" of Defendants under the FLSA's economic realities test in spite of Defendants' uniform non-employee classification. *See* Amended Complaint (Doc. 18) at ¶ 22. This is because, *inter alia*: (i) Defendants micromanage the manner in which Consultants perform their work, leaving them with little independent discretion or control over their work; (ii) Consultants have virtually no opportunity for profit or loss depending upon their managerial skill; (iii) Consultants' personal investment in equipment is minimal and they have little discretion in selecting the materials and products to be used for their work; (iv) the services rendered by

Consultants do not require any special skills beyond those easily obtained through routine on-the-job training; (v) Consultants' positions are permanent in that Defendants' scheduling practices make it unrealistic for them to pursue other business opportunities; and (vi) the services rendered by Consultants are an integral part of Defendants' business. *Id.*

Mr. Sanchez worked as a Consultant for Defendants from approximately December 2016 until approximately February 2017. *Id.* at ¶ 23. As a Consultant, Mr. Sanchez was paid a day-rate of $350.00. *Id.* at ¶ 24. He was also typically scheduled to work 12 hour shifts and regularly worked over 40 hours in a week. *Id.* at ¶¶ 25-26.

Mr. Sanchez alleges that Defendants violated the FLSA by uniformly misclassifying him and other Consultants as non-employees and then failing to pay them overtime premium compensation for hours worked over 40 in a week. *Id.* at ¶ 27. Instead, Consultants were just paid a day-rate by Defendants even though the FLSA requires that employers pay day-rate workers extra premium compensation for their overtime hours. *See* 29 C.F.R. § 778.112.

II. ARGUMENT

A. The FLSA's Fairly Lenient "Conditional Certification" Standard.

In *Avendavo v. Averus, Inc.*, 2015 WL 1529354, *4 (D. Colo. March 31, 2015) (Arguello, J.), this Court described the process for certifying FLSA collectives as follows:

> Section 216(b) of the FLSA provides a unique procedural mechanism allowing "collective" actions for minimum wage and/or overtime violations. Such actions "may be maintained against any employer . . . by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." *Id.* Unlike class actions under Rule 23 of

the Federal Rules of Civil Procedure, an FLSA "collective class" only includes members who expressly opt in to the class in writing. *Id.*

The Tenth Circuit has approved of the use of a two-step, case-by-case process for determining whether putative employees are "similarly situated" to the named plaintiff(s) for purposes of Section 216(b). *See Thiessen v. GE Capital Corp.*, 267 F.3d 1095, 1102-1105 (10th Cir. 2001) (approving of the "ad hoc" two-step approach and describing it is as "arguably . . . the best" approach for 216(b) actions, because "it is not tied to the rule 23 standards.").

During the "first stage," the Court makes an initial, so-called "Notice' determination of whether the named plaintiff(s) and the opt-in "class" are "similarly situated." *Id.* at 1102-03. That is, the district court determines whether a collective action should be certified for purposes of sending notice of the action to potential class members. *See Mooney v. Aramco Servs. Co.*, 54 F.3d 1207, 1213-14 (5th Cir. 1995). Because this determination is typically made before the parties complete discovery, it "'require[s] nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy, or plan.'" *Thiessen*, 267 F.3d at 1102 (quoting *Vaszlavik v. Storage Tech. Corp.*, 175 F.R.D. 672, 678 (D. Colo. 1997)). At this stage, "a court need only consider the substantial allegations of the complaint along with any supporting affidavits or declarations." *Smith v. Pizza Hut, Inc.*, No. 09-CV-01632-CMA, 2012 U.S. Dist. LEXIS 56987, 2012 WL 1414325 (D. Colo. Apr. 21, 2012). In making the decision as to conditional certification, "the court does not weigh evidence, resolve factual disputes, or rule on the merits of plaintiffs' claims." *Id.*

The standard at the Notice juncture is a "fairly lenient" one, and usually results in conditional certification. *Thiessen*, 267 F.3d at 1103 (describing the standard as "fairly lenient"); *Mooney*, 54 F.3d at 1214 ("Because the court has minimal evidence, [the notice-stage] determination . . . typically results in 'conditional certification" of a representative class"); *Renfro v. Spartan Computer Servs., Inc.*, 243 F.R.D. 431, 432 (D. Kan. 2007) (same); *Williams v. Sprint/Un. Management Co.*, 222 F.R.D. 483, 485 (D. Kan. 2004) (same). ***The "similarly situated" standard is considerably less stringent than Rule 23(b)(3) class action standards.*** *Pegues v. CareCentrix, Inc.*, 12-2484-CM, 2013 U.S. Dist. LEXIS 64224, 2013 WL 1896994, at *1 (D. Kan. May 6, 2013) (citing *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1096 (11th Cir. 1996)). If the district court "conditionally certifies" the class, putative class members are provided with court-approved notice and the opportunity to

> opt in to the action, and the matter proceeds as a representative action throughout discovery. *La Roche Inc. v. Sperling*, 493 U.S. 165, 170-71, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989); *Hipp v. Liberty Nat. Life Ins. Co.*, 252 F.3d 1208, 1218 (11th Cir. 2001).
>
> At the conclusion of discovery — often prompted by a motion to decertify by the defendant — the Court makes a second determination, utilizing a stricter "similarly situated" standard, examining the "disparate factual and employment settings of the individual plaintiffs." *Thiessen*, 267 F.3d at 1102-03; *Vaszlavik*, 175 F.R.D. at 678. During this "second stage," the Court analyzes several factors, including (1) disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to defendant which appear to be individual to each plaintiff; (3) fairness and procedural considerations; and (4) whether Plaintiff made any requisite statutory filings before bringing suit. *Id.* at 1103.

Id. at *3-4 (emphasis supplied); *see also* *Turner v. Chipotle Mexican Grill, Inc.,* 123 F. Supp. 3d 1300, 1308 (D. Colo. 2015) ("The proper approach . . . is to presumptively allow workers bringing the same statutory claim against the same employer to join as a collective, with the understanding that individuals may be challenged and severed from the collective if the basis for their joinder proves erroneous.");[4] *Baldozier v. Amer. Family Mut. Ins. Co.,* 375 F. Supp. 2d 1089, 1092 (D. Colo. 2005) (notice stage

[4] In *Chipotle*, Judge Kane questioned the use of language regarding "certification" in the context of motions to provide notice under *Hoffman-LaRoche*. According to Judge Kane's detailed analysis of the history and intent behind the FLSA §216(b) process, the use of "certification" language needlessly conflates §216(b) notice with the entirely different, and more rigorous process under FED. R. CIV. PROC. 23. *Chipotle*, 123 F.Supp. at 1307 (The use of the FLSA's opt-in vs. Rule 23's opt-out process "removes any rationale for subjecting individual party plaintiffs in collective actions to the rigorous procedural requirements of class actions."). Regardless of whether the Court uses the two-stage certification concept, however, the fundamental idea is the same – at this stage, Plaintiff's burden is lenient because all that is being requested is that collective members be notified of a pending lawsuit that may affect their rights and given an opportunity to make an informed decision about joining. Early notice protects class member rights by ensuring that the statute of limitations does not run on meritorious claims while the parties otherwise move through the litigation process.

certification "requires 'nothing more than substantial allegations that the putative class members were together the victims of a single decision, policy or plan'") (citing *Thiessen,* 267 F.3d at 1102); *Brown v. Money Tree Mort., Inc*., 222 F.R.D. 676, 679 (D. Kan. 2004) ("The standard for certification at this notice stage, then, is a lenient one that typically results in class certification.").

B. Notice is Appropriate Because Mr. Sanchez is "Similarly Situated" to Defendants' Other Consultants.

The Court should order that notice be distributed to: **All individuals who, during any time within the past three years, worked for some or all of the Defendants in the United States and were classified as non-employees pursuant to either any version of the attached Master Service Agreement (Exhibit C) or any similar contract.** Notice is appropriate because Mr. Sanchez and Defendants' other Consultants are "similarly situated" under the lenient conditional certification standard based on the following allegations and common policy documents:

- Consultants were uniformly classified by Defendants as non-employees. *See* Amended Complaint (Doc. 18) at ¶ 22;

- Consultants were required to sign a "Master Service Agreement," *see* Exhibit C, or similar contract that, *inter alia*, (i) states that Consultants will be treated as "independent contractor[s]" across-the-board regardless of their individual work circumstances, (ii) sets minimum insurance coverage levels that each Consultant must maintain, (iii) establishes "CONFIDENTIALITY OBLIGATIONS" for the Consultant, (iv) sets "STANDARDS OR CONDUCT" that each Consultant must adhere to including "arriv[ing] at the jobsite at the designated time, follow[ing] all safety procedures and requirements applicable to [the Consultant's] Services; and conduct[ing] themselves in a safe, professional and respectful manner", and (v) provides the Consultant's day-rate payment. *Id.*;

- Consultants were required to abide by Patriot Solids written "Disciplinary Program" that is applicable to "[a]ll employees and consultants" that lists both "major violations and grounds for immediate termination" and "[m]inor violations requiring a written warning" as well as incorporating a template "Employee Disciplinary Form" to be utilized company-wide. *See* Exhibit D;

- Consultants were issued Patriot Solids' "Stop Work Authority Program" document which requires "all employees/consultants to stop any job if any safety or environmental concern arises" and mandates that "[a]ll new employees/consultants will be trained in our Stop Work Authority program during new hire training before work assignment." *See* Exhibit E;

- Consultants were covered by Patriot Solids' "Drug & Alcohol Policy" which applied equally to "employees/consultants." *See* Exhibit F;

- Consultants had to adhere to Patriot Solids' "Accident Reporting" policy which addresses the role of "employees/consultants" in this corporate process. *See* Exhibit G;

- Consultants were required to sign Q'Max America's "Acknowledgment Regarding Trade Secrets and Prior Agreements Limiting Competition" policy which required, *inter alia*, "that any newly-hired employee disclose any contractual limitations on his or her ability to compete, solicit customers, recruit employees, or otherwise perform any job duties on behalf of Q'Max [America]." *See* Exhibit H;

- Consultants had to sign Q'Max America's "Confidentiality, Non-Compete and Non-Solicitation Agreement" in which they are referred to as an "Employee" of the "Employer" Q'Max America and describes the parties' "employment relationship." *See* Exhibit I. This agreement also states that, *inter alia*: (i) "Employee shall devote his or her full business time and attention to the Employer's business and shall use Employee's best efforts to promote its success", (ii) "Employee shall promptly disclose to the Employer all ideas, inventions, computer programs, and discoveries, whether or not patentable or copyrightable, which Employee may conceive or make alone or with others, during Employee's employment", and (iii) "Employee" shall agree to a "Non-Competition Restriction." *Id.*;

- Consultants are required to complete Q'Max America's "Disclosure

and Consent to Obtain Employee Information" form which refers to Consultants as either "an applicant for employment or a current employee with Q'Max America." *See* Exhibit J;

- Consultants were each paid on a day rate basis. *See* Amended Complaint (Doc. 18) at ¶ 24;
- Consultants were regularly required to work in excess of 40 hours in a week. *Id.* at ¶ 26; and
- Consultants did not receive overtime premium compensation when they worked over 40 hours in a week. *Id.* at ¶ 27.

In combination, these allegations and common documents demonstrate that Plaintiffs and other Consultants were each victims of Defendants' uniform non-employee classification and compensation practices. Thus, conditional certification of the proposed collective is appropriate.

III. CONCLUSION

WHEREFORE, Mr. Sanchez respectfully requests that the Court to grant this Motion and enter an Order allowing his counsel to send a notice to all individuals who, during any time within the past three years, worked for some or all of the Defendants in the United States and were classified as non-employees pursuant to either any version of the attached Master Service Agreement (Exhibit C) or any similar contract.

RESPECTFULLY SUBMITTED this 20th day of September, 2017.

s/R. Andrew Santillo

Peter Winebrake
R. Andrew Santillo
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BRIAN D. GONZALES, PLLC
2580 East Harmony Road, Suite 201
Fort Collins, Colorado 80528
Telephone: (970) 214-0562
BGonzales@ColoradoWageLaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on September 20, 2017, the foregoing **MOTION FOR CONDITIONAL CERTIFICATION OF THE FLSA CLAIM** was served electronically on the following:

David Jordan, Esq.
LITTLER MENDELSON, P.C.
1301 McKinney Street, Suite 1900
Houston, TX 77010
DJordan@littler.com

s/R. Andrew Santillo

Exhibit A

[*insert mailing date*]

NOTICE OF COLLECTIVE ACTION LAWSUIT

Sanchez, et al. v. Palladium Equity Partners, LLC, et al., 1:17-cv-01382-CMA
United States District Court, District of Colorado

TO: [*INSERT NAME*]

PLEASE READ THIS NOTICE CAREFULLY

INTRODUCTION

This Notice informs you of the existence of a collective action lawsuit seeking unpaid wages under federal law. You have a right to participate in the lawsuit.

DESCRIPTION OF THE LAWSUIT

In June 2017, Joseph Sanchez ("Plaintiff") started this lawsuit against defendants Palladium Equity Partners, LLC, Q'Max Solutions Inc., Q'Max America Inc., Patriot Solids Control, and Patriot Drilling Fluids ("Patriot/Q'Max"). The lawsuit is proceeding in the United States District Court in Denver, Colorado and is assigned to United States District Judge Christine M. Arguello.

The lawsuit alleges that Patriot/Q'Max violated federal wage law by wrongfully designating certain oil and gas rig workers as "independent contractors" rather than "employees." The lawsuit further alleges that, as a result of this wrongful classification, Patriot/Q'Max failed to pay these oil and gas rig workers extra overtime compensation for hours worked over 40 per week.

The lawsuit seeks the recovery of unpaid overtime premium compensation during the last three years plus liquidated damages and attorney's fees and expenses.

The lawsuit is in the early stages. The Federal Court has not yet decided who will win.

RETALIATION PROHIBITED

If you join the lawsuit, federal law prohibits Patriot/Q'Max from retaliating against you as a result of your participation.

HOW TO JOIN THE LAWSUIT

You may join the lawsuit by completing the enclosed "Consent to Join" form and returning it in the enclosed envelope to one of the Plaintiff's lawyers at the following address:

The Law Offices of Brian D. Gonzales, PLLC
2580 East Harmony Road, Suite 201
Fort Collins, CO 80528

You may also email a copy of the form to BGonzales@ColoradoWageLaw.com or text a clear picture to 970-214-0562. The form must be returned by ***[insert date 60 days after initial mailing date]***. If you fail to meet this deadline, you will not be allowed to participate in the lawsuit.

EFFECT OF JOINING THE LAWSUIT

If you join the lawsuit, you will be bound by the judgment of the Federal Court on all issues, including the reasonableness of any settlement. If the Federal Court finds in favor of Plaintiff, you will receive a money payment. If the Federal Court finds in favor of Patriot/Q'Max, you will receive nothing.

EFFECT OF NOT JOINING THE LAWSUIT

If you do not join the lawsuit, you will not be affected by any judgment or settlement resulting from the lawsuit.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you join the lawsuit, you will be represented by The Law Offices of Brian D. Gonzales, PLLC, 2580 East Harmony Road, Suite 201, Fort Collins, CO 80528 (www.coloradowagelaw.com; (970) 214-0562, BGonzales@ColoradoWageLaw.com) and Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025 (www.winebrakelaw.com; (215) 884-2491, ASantillo@WinebrakeLaw.com).

You will not be required to pay any fees to the above law firms. The firms have taken this case on a "contingency" basis. If the lawsuit is unsuccessful, the firms will receive nothing. If the lawsuit results in a recovery, the firms will ask the Federal Court to award legal fees separate and apart from your recovery.

Please call, text or email the above law firms if you have any questions or desire any additional information about the lawsuit.

THIS NOTICE HAS BEEN AUTHORIZED BY UNITED STATES DISTRICT JUDGE CHRISTINE M. ARGUELLO. THE COURT HAS TAKEN NO POSITION REGARDING THE LAWSUIT'S MERITS.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01382

JOSEPH SANCHEZ, on behalf of himself and all similarly situated persons,

Plaintiff,

v.

PALLADIUM EQUITY PARTNERS, LLC; Q'MAX SOLUTIONS INC.; Q'MAX AMERICA INC.; PATRIOT SOLIDS CONTROL; and PATRIOT DRILLING SOLUTIONS,

Defendants

CONSENT TO JOIN

I consent, pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), to become a party plaintiff in the above-captioned action. I agree to be represented by Winebrake & Santillo, LLC (Dresher, PA) and Brian D. Gonzales, PLLC (Fort Collins, CO). I understand that I will be bound by the judgment of the Court on all issues in this action, including the fairness of any settlement. **If you do not hear from us after you return this form, please contact us to confirm receipt.**

_____ _____
Signature Date

_____
Name (Please Print Neatly)

_____
Address

_____
City, State, Zip Code

_____
Phone Number

_____
Email Address

Return to:

The Law Offices of Brian D. Gonzales, PLLC
2580 East Harmony Road, Suite 201
Fort Collins, CO 80528
Phone/Text: (970) 214-0562
Email: BGonzales@ColoradoWageLaw.com

Exhibit C

MASTER SERVICE AGREEMENT

INDEPENDENT CONTRACTOR

Name of Consulting, LLC: _____ Email: _____

Contact Name: _____ Tax Payer ID # _____

Mailing Address: _____ Emergency Contact Name: _____

City, State, Zip: _____ Emergency Contact Phone: _____

Cell Phone: _____

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____**("Agreement")** by and between Patriot Solids Control, a Division of Q'Max America **("Company")** and the independent contractor set forth above **("Contractor").**

WITNESSETH:

WHEREAS, Company may from time to time desire Contractor to perform consulting services related to Company's oil and gas solids control operations; and,

WHEREAS, Company and Contractor desire to establish certain general terms and conditions which shall apply to and become part of each and every contract, whether written or oral, entered into between the parties.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto mutually agree as follows:

1. **AGREEMENT.** This Agreement shall control and govern all work and/or equipment, materials or supplies furnished by Contractor for Company **("Contractor's Services").** In the event there is a conflict between the provisions herein and any oral or verbal contract or work order between the parties hereto in connection with the subject matter herein, it is understood and agreed that the provisions herein shall be controlling. It is expressly understood and agreed by the parties hereto that no provision of any work order or other written instrument is used by either party shall supersede the provisions of this Agreement unless specific reference to this Agreement is made therein and said instrument is signed by an officer or other duly authorized person for each party. This Agreement does not obligate Company to use Contractor's Services, nor does it obligate Contractor to provide Contractor's Services.

2. **TERM OF AGREEMENT.** This Agreement shall continue in full force and effect for a term of one (1) years from the date this Agreement is made and from year to year thereafter unless terminated by thirty (30) days' written notice by one party hereto to the other party. Such termination shall not relive either party of its respective obligations and liabilities arising from or incident to Contractor's Services performed hereunder prior to the date of termination.

3. **COMPENSATION AND PAYMENT.** Company agrees to pay Contractor for work performed within 30 days after Contractor's Services at the rate listed on **Exhibit A** attached hereto and incorporation herein. The rate may be changed from time to time as long as it is written and signed by both parties.

4. **INDEMNIFICATION.** To the fullest extent permitted by law, the Contractor shall and does agree to indemnify and hold harmless the Company, its affiliated companies, their joint owners, officers, directors, shareholders, employees, and agents **("Indemnitee")** from and against all claims, damages, losses, liens, causes of action, suits, judgments, penalties, fines and expenses, including attorney fees, of any nature, kind or description whatsoever (hereinafter collectively referred to as "**Liabilities**") of any person or entity whomsoever arising out of, caused in whole or in part by or resulting directly or indirectly from any act or omission, including negligence, of Contractor, even if these Liabilities are caused in part by the negligence or omission of any Indemnitee.

5. **INSURANCE.**

(A). Contractor shall maintain and pay for the following insurance:

(i) Worker's Compensation insurance (including employer's liability) complying with applicable laws with minimum limits as required by such applicable laws;

(ii) Commercial General Liability insurance with a single limit of not less than $1,000,000.00 per occurrence $2,000,000.00 general aggregate; and,

(iii) Automobile Liability insurance with limits of at least $1,000,000.00 each occurrence for bodily injury and proper damage liability combined and insuring liability arising out of the ownership, maintenance, or use of any owned, hired, or non-owned vehicles.

(B). Each policy of insurance carried pursuant to this Agreement shall provide that such insurance shall not be cancelable except with thirty (30) days written notice to the additional insureds, including Company. In addition, each insurance policy shall be maintained in force from the commencement of Contractor's Services until final completion of Contractor's Services and the Commercial General Liability insurance coverage, including additional insured coverage for Company, shall be maintained in force until expiration of the applicable statute of limitations for claims related to Contractor's Services.

(C). The Commercial General Liability policy shall name Company as an additional insured. The additional insureds shall be provided the same coverage as provided by Contractor. All policies shall provide that the additional insured coverage shall be primary and that any other insurance coverage carried by or otherwise available to the additional insureds will be excess and will not contribute with this additional insured coverage.

(D). Prior to the commencement of Contractor's Services, Contractor shall give Company a certificate of insurance evidencing each insurance policy required by this section.

(E). To the extent permitted by law, Contractor hereby waives subrogation of claims against Company, its affiliates, agents and employees.

6. **ASSIGNED SERVICE JOBS.** Upon notification by Company of the desire for Contractor's Services and acceptance by Contractor, Contractor will commence Contractor's Services at the agreed upon time **("Assigned Service Job")**, and continue such operations diligently, with due care and without delay, in a good and workmanlike manner. Company may replace or terminate Contractor on any Assigned Service Job upon written or oral notification.

7. **INDEPENDENT CONTRACTOR STATUS.** Contractor is an independent contractor with the freedom of accepting or rejecting assignments under this Agreement and determining the specific manner in which the services are provided under this Agreement. Contractor will at no time be considered an employee of the Company and is not entitled to any employee benefits and is not covered by any insurance, including health insurance or worker's compensation insurance. Contractor shall be responsible for the payment of all federal, state, and local taxes contributions imposed or required in connection with the services to be provided hereunder, including any such payment due under unemployment insurance, social security, income tax laws and sales or service tax laws. Contractor shall be required to supply its own tools necessary for completion of Contractor's Services, including but not limited to, a vehicle, personal protective equipment, computer, and cell phone.

8. **CONFIDENTITALITY OBLIGATIONS.** The Company owns certain confidential information crucial to its business or financial affairs, know-how, process, marketing plans, bids, techniques, products, services, contracts, forms, research and development, plans or projections, and all information relating to the Company's solids control and formulations ("**Confidential Information**"). The Company also owns confidential information about its existing customers and prospective customers, including their identities, contact people, needs, records, the source for referrals and new business, market data and other confidential customer information ("**Customer Records**") and, through the expenditure of considerable effort and resources, the Company has developed and will continue to develop leads on prospective customers.

(A). Contractor will be providing Contractor's Services. As a result of those services, Contractor will have access to Confidential Information and Customer Records. Contractor recognizes and acknowledges that the Confidential Information and Customer Records are legally protected interests and that the improper disclosure or use of the Confidential Information and Customer Records by Contractor directly or indirectly, as a result of Contractor's action or inaction, would cause irreparable injury to Company by jeopardizing, compromising, and perhaps eliminating the competitive advantage Company holds or may hold because of the existence and secrecy of the Confidential Information and Customer Records.

(B). Contractor will not use or seek to use any of Company's Confidential Information or Customer Records for its own benefit or for the benefit of any other person or business or in any way adverse to Company's interests; and Contractor will preserve the secrecy of and will not disclose directly or indirectly to any other person or business any of Contractor's Confidential Information and Customer Records without the express written consent of Company prior to its disclosure.

(C). If Contractor should fail to maintain the confidentiality of any Confidential Information or Customer Records covered by this Agreement, Company will be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which Company may be entitled.

9. **STANDARDS OF CONDUCT.** Contractor agrees to comply with Federal and State laws (including labor and employment laws), ordinances and rules, regulations and order of governmental agencies applicable to Contractor's Services. As a part of performing Contractor's Services, Contractor agrees to arrive at the jobsite at the designated time; follow all safety procedures and requirements applicable to Contractor's Services; and, conduct themselves in a safe, professional and respectful manner.

10. **MISCELLANEOUS**

(A). The Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

(B). Where required for proper interpretation, words in the singular shall include the plural; and words of any gender shall include all genders. The descriptive headings of the paragraphs in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

(C). If either party files a lawsuit or action in connection with this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party, in addition to all other remedies or damages as limited herein, reasonable attorneys' and costs of court incurred in such action.

(D). This Agreement including the exhibits attached hereto constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, of the parties in connection therewith.

(E). This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute the whole. Facsimile signatures will be treated as originals.

(F). The parties acknowledge that they have had the opportunity to be represented by counsel in connection with the transactions contemplated herein and that this Agreement shall be interpreted according to its fair construction.

(G). If any provision in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(H). This Agreement may not be amended and no condition, covenant, or obligation may be waived, except by an agreement in writing signed by Contractor and Company.

This Agreement is effective as of the _____ day of _____, 20_____.

CONTRACTOR		**Patriot Solids Control, a Division of Q'Max America**	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____

EXHIBIT A
COMPENSATION

Contractor will be paid a rig rate per day of $350.00 and a $25.00 per diem for the Contractor's services on the rig.

COMPANY WILL NOT REIMBURSE ANY EXPENSES INCURRED BY THE CONTRACTOR UNLESS CONTRACTOR RECEIVES PRIOR WRITTEN AUTHORIZATION FROM COMPANY.

Revision Date: 12/6/16

Exhibit D

Subject: Disciplinary Program

Date: April 1, 2014

Revision Number: 4

Approved:

Patriot Solids Control:
A Division of Q'Max America

1.0 Purpose

A Disciplinary Program has been established for employees/consultants at Patriot Solids Control. The purpose of this Program is to establish and provide a work environment where Patriot Solids Control employees/consultants are protected and accidents are prevented. The implementation of a disciplinary system helps ensure workplace safety and health by letting the employees know the expectations of Patriot Solids Control and correcting their behavior before an accident occurs.

2.0 Scope and Application

All employees and consultants are expected to be knowledgeable of Patriot Solids Control Disciplinary Program. Patriot Solids Control will require all employees to sign a form stating that they have read and will adhere to the guidelines in this Program to assure a healthy, safe work environment (Appendix 6.1).

3.0 Discussion

The existence of a Disciplinary Program is critical in assuring the successful implementation of the Patriot Solids Control Safety and Health Program. The Patriot Solids Control Disciplinary Program establishes clear rules and safe working practices. This Program also states the actions that Patriot Solids Control will invoke if employees or consultants break these rules. All employees' and consultants, regardless of their position, are responsible for the enforcement of this Disciplinary Program.

4.0 Procedure

4.1 Employee/Consultant Information and Training

Patriot Drilling Fluids has determined what is considered minor and major violations of their policy. Major violations are considered immediate grounds for termination regardless of the circumstances. Minor violations by an employee/consultant will result in a meeting with their direct supervisor. A written statement dated and signed by both the supervisor and employee/consultant documenting the minor violation and corrective actions to be taken will be placed in the employee's file (Appendix 6.2). More than 3 minor violations in an employee's or consultant's file (even if different violations) will be considered equivalent to a major violation and will result in an employee's or consultant's discharge.

4.2 Termination and Discharge

The list of major violations and grounds for immediate termination are for the following:

- Drinking alcohol, and/or drug abuse prior to or during working hours.
- Fighting, provoking or engaging in an act of violence against another person on Patriot Solids Control or client property.
- Theft of Patriot Solids Control equipment and material.
- Willful destruction of Patriot Solids Control property.
- Failure to wear Personal Protective Equipment.
- Not using safety harnesses and lanyards when there is a potential for falling.
- Removing and/or making inoperative safety guards on tools and equipment.
- Tampering with machine safeguards or removing machine tags or locks.
- Removing barriers and/or guardrails and not replacing them.
- Failure to follow recognized industry practices.
- Failure to follow rules regarding the use of company equipment or materials.
- Major traffic violations while using a company vehicle.
- Engaging in dangerous horseplay.
- Failure to notify Patriot Solids Control of a hazardous situation.
- Failure to abide by Patriot Solids Control safety and health programs/policies or rig site safety and health programs/policies.

4.3 Minor Violations

Minor violations requiring a written warning are as follows:

- Failure to achieve annual re certifications for training or medical monitoring/respiratory fit testing (if required) as specified per a Patriot Solids Control Program (when adequate opportunities for training has been provided by Patriot Solids Control).
- Repetitive lateness on a job site.
- Minor traffic violations while using a company vehicle.
- Failure to read and safety meeting forms or other documentation required by additional Patriot Solids Control Programs or rig/well site operator Programs.
- Failure to properly care and maintain issued PPE.
- Failure to maintain Patriot Solids Control facilities and equipment.

5.0 Patriot Drilling Fluids Mission Statement

Patriot Solids Control is dedicated to providing a safe work environment, free of recognizable hazards. A strict policy of compliance with all applicable state and federal standards codes and regulations is adhered to by Patriot Solids Control. All Patriot Solids Control employees should recognize and accept their responsibility for ensuring a safe and healthy work experience. Patriot Solids Control supervisors are ultimately responsible for ensuring that this policy is implemented and to make the commitment to safety that is required for a safe work environment.

5.1 Understanding and Agreeing to Patriot Solids Control Disciplinary Program

Form

UNDERSTANDING AND AGREEING TO PATRIOT SOLIDS CONTROL DISCIPLINARY PROGRAM

Name Date of Hire

Employee ID # _____ Today's Date

As a Patriot Solids Control employee/contractor it is your responsibility to maintain the highest possible standards of compliance with all Patriot Drilling Fluids, , LLC health and safety guidelines.

To ensure this standard is met and to achieve the objective of the Patriot Solids Control mission statement, a Disciplinary Program has been prepared and implemented.

By placing your signature below, you are stating that you have read the Disciplinary Program and will abide by the rules and procedures set for by Patriot Solids Control to ensure employees'/contractors' safety and health in the work place.

Any questions should be directed to your Supervisor or Patriot Solids Control Safety, Health, and Environmental department.

Employee's/Contractor's Printed Name Signature _____

5.2 Management Disciplinary Program – Form

Employee Disciplinary Form

	Performance		Warning		Termination
	Discussion		1 2 3		

Employee Name _____ **Position** _____

Manager/Supervisor _____

Date, Time and Location of Discussion _____

Reason for Discussion (detailed description)

_____

_____

_____

Date of Incident _____ **Time**

Witnesses to Incident _____

_____

Employee's statement regarding incident

_____

_____

_____

I agree ___ disagree ___ with employee's statement.

Comments: _____

Disciplinary action to be taken:

I have read this Employee Disciplinary Form and I understand it.

Signature of Supervisor _____ Date _____

Signature of Witness _____ Date_____

Signature of Employee _____ Date_____

This completed form is to be forwarded to Corporate Human Resources and will be placed in the employee's personnel file.

Exhibit E

Patriot Solids Control

Stop Work Authority Program

I. Purpose

A. This Stop Work Authority program is to establish and implement a procedure to require all employees/consultants to stop any job if any safety or environmental concern arises.

II. Responsibilities

A. Program Administrator (SH&E Manager)

1. Issue and implement this program and ensure that it meets all requirements.

2. Provide training on the contents of this plan and the importance of each person's opinion about job safety to all consultants during initial new hire training.

B. Managers and Supervisors

1. Know and understand the proper procedures involved in this program. Value the opinions of employees/consultants and ensure that no employee is ever criticized or reprimanded for stopping a job.

2. Comply with procedures in this plan making sure to assess each stopped job thoroughly.

3. Communicate stopped work situations to HS&E Manager.

C. Employees/Consultants

1. Comply with all aspects of this Stop Work Authority program.

2. Attend training before employment/consulting to understand the requirements of this program.

3. Be aware and communicate any hazards of jobs, stop any job immediately if safety or environmental concerns arise, report all stopped jobs to immediate supervisor. Uncertainty about the control of safety and environmental risks require the job to be stopped.

III. General Stop Work Authority Requirements

A. Every employee/consultant is required to stop any job if they have uncertainty about the safety or environmental risk controls. Managers and supervisors shall assess the entire job. It is critical that work not begin again until all concerns are addressed and resolved.

1. If an employee/consultant has concerns or questions about the safety or environmental controls to prevent accidents, the employee/consultant should immediately notify coworkers working on the same job of the concern.

2. The employee/consultant should then notify their immediate supervisor of their concerns.

3. The supervisor should make sure that the job is halted until he/she has an opportunity to go to the worksite and assess the safety concerns of the employee/consultant. No employee/consultant should be reprimanded or ridiculed by their supervisors or peers for stopping any job.

4. Once the hazards have been mitigated or determined to be nonexistent, the supervisor should give approval to resume the job.

5. The supervisor should email a brief report to the HS&E Department with details about every job stoppage. These details shall include the job that was

stopped, who stopped the job, what the concerns were, and if any additional safety measures were required.

6. The HS&E Department will review each stopped job report and keep them on file. If a stopped job required implementation of additional safety measures, these safety measures for that particular task will be shared with other facilities performing similar duties. Active participation of facilities and individuals may be rewarded.

IV. Training

A. Training

1. All new employees/consultants will be trained in our Stop Work Authority program during new hire training before work assignment. Training will be documented on new hire sign in sheet that includes the employee's name, date of training, training topics, and trainer's name.

2. All current employees/consultants will be trained in our Stop Work Authority program through the use of monthly safety meetings.

Signature & Date: _____

Exhibit F

Drug & Alcohol Policy
Patriot Solids Control

In 1988, Congress enacted the Drug Free Workplace Act to require federal contractors to establish and maintain a work environment that is free from the effects of drug use and abuse. Federal Regulations 49 CFR Part 40 (§382) present the general terms of this program and its guidelines. We agree with that goal and believe that **Patriot Solids Control** has responsibility to its employees/consultants and those who use or come in contact with its products/services, to ensure a safe and productive work environment. To satisfy these responsibilities, it is the policy of **Patriot Solids Control** and a condition of employment that an employee/consultant be present and able to perform their job free from the effects of alcohol, narcotics, depressants, stimulants, hallucinogens and cannabis or any other substances, which can impair job performance.

Our Commitment

We recognize that drug and alcohol abuse may be a sign of chemical dependency and that substance abuse can be successfully treated with professional help.

Patriot Solids Control

Provides an Employee Assistance Program (EAP) through SapList.Com for employees/consultants to deal with substance abuse and other personal problems that can affect work performance. Our commitment is to help employees/consultants remain productive members of our team. In certain circumstances, the company may insist upon a mandatory referral to our EAP as a condition of continued employment. No employee/consultant will be disciplined or discriminated against simply for seeking help.

Employee Responsibility

The employee/consultant is responsible for following all of our work and safety rules, and for observing the standards of behavior and employer, co-workers, and customers have the right to expect from you. In addition, if you believe you may have a problem with drugs or alcohol, you are responsible for seeking assistance, whether from or through the company or any other resource, before a drug or alcohol problem adversely affects your work performance or results in a violation of this policy. The time to seek help is BEFORE you are in "trouble", NOT AFTER. If a professional assessment is made that you have a problem with Drugs or Alcohol, your continued employment may be conditioned upon:

- Entering into and completing a treatment program approved by the company.
- Signing and living up to a last chance performance agreement.
- Undergoing a Follow-up Testing Program at companies' discretion.

Scope of Our Policy

This Policy and each of its rules apply whenever an employee/consultant is on or in Company Property, surrounding grounds and parking lots, leased or rented space. Company time (including breaks and meal periods), in any vehicle used on Company business, and in other circumstances (such as on customer premises or at business/sales functions) we believe may adversely affect our operations, safety, reputation or the administration of this policy.

Our Drug and Alcohol Rules

The following rules are extremely important and an employee/consultant who violates any one of them will be subject to disciplinary action, up to and including termination.

1. Alcohol: An employee/consultant may not possess, use, transfer, offer, or be under the influence of any intoxicating liquor while at work or on company business. This rule prohibits using any alcohol prior to reporting to work, during breaks or meal periods, or in conjunction with any Company activity, except social or business events where a Corporate Officer has authorized the moderate consumption of Alcoholic Beverages.

2. An employee/consultant will be removed from a Safety Sensitive Position for 24 hours if your BA is more than .02 and less than .04. A Breath Test over .04 is a DOT Violation, and a referral will be required to a Substance Abuse Professional before being released back to a safety sensitive position.

3. Drugs: An employee/consultant may not possess, use, transfer, offer, share, attempt to sell or obtain, manufacture, or be under the influence of any drug or similar substance and also may not have any drugs of similar substances present in the body. Thus, an employee/consultant who tests positive for any illegal-drug violates this rule. This rule also pertains to Prescription drugs being taken without doctor's authorization.

4. Drug Paraphernalia and Alcohol Containers: An employee/consultant may not possess any Drug Paraphernalia or Alcohol Containers.

5. Prescriptions/ Over–the-counter Medications: It is the employees/consultants responsibility to check the potential effects of prescribed drugs and over-the counter medications with your doctor or pharmacists before starting work, and to immediately let your supervisor know when such use makes it unsafe for you to report to work or do your job.

6. Adulterants: Any substance that is used for the purpose of manipulating a drug test by adding to the specimen or ingesting.

Pre-Employment Testing

All safety sensitive employees/consultants are required to pass a DOT pre-employment urine drug test before being hired.

Random Testing Program

The Random-testing program is implemented by a third party and/or a computerized Selection Process throughout the year. The Third Party Administrator (TPA) combines the drivers from our company with drivers from other companies. The TPA selects 4 times per year and notifies the DER, Designated Employee Representative. The DER can notify the Driver within the selection period. When the driver is notified, they must test ASAP. The Federal Motor Carrier Safety Administration does not allow testing delays due to convenience or movement of freight. (FMCSA)

Mandatory Post Accident Testing.
Post-accident drug and/or alcohol testing will be at supervisor or company request, or as Defined in 49 CFR Part 40. *See Chart*

Type of accident involved	Citation issued to **the CMV driver? (Class A or B)**	**Test must be Performed.**
i. Human Fatality	**Yes** **No**	**Yes** **Yes**
ii. Bodily injury with immediate medical treatment away from scene.	**Yes** **No**	**Yes** **No**
iii. Disabling damage to any motor vehicle requiring tow away.	**Yes** **No**	**Yes** **No**

Reasonable Suspicion Testing or Reasonable Cause
At least one Supervisor will be trained in accordance to 49 CFR 382.603 of the Federal Register to make these observations of Work Performance, Behavior, and Physical Indicators.

- Observable Symptoms or Unusual Behavior.
- The Odor or Smell of Alcohol or Drugs on the employee's/consultant's breath or clothes or in an area (such as in a vehicle, office, work area, or restroom) immediately controlled or occupied by the employee.
- Alcohol, alcohol containers, illegal drugs or drug paraphernalia in the employee's/consultant's possession or in an area controlled or occupied by the employee/consultant (vehicle, office, desk restroom.)
- Unexplained or Significant deterioration in job performance.
- Unexplained significant changes in behavior (e.g., abusive behavior, repeated disregard of safety rules or procedures, insubordination, etc.);
- Evidence that the employee/consultant may have tampered with a previous drug test.
- Criminal citations, arrests or convictions involving drugs and alcohol.
- Unexplained absenteeism or tardiness
- Employee/consultant admissions regarding drug or alcohol use;
- Any involvement in any work-related accident or near misses.
- Any type of Paraphernalia discover on your person or Company Property

Fit for Duty

The company could require a fit for duty exam by a certified Medical Practitioner; this exam can be administered along with Drug and Alcohol Screen to determine if employee/consultant is fit for Duty. This could be requested in addition to the DOT Medical card Certificate.

Duty to Cooperate

An employee who fails to cooperate in the administration of this policy generally will be terminated and is in violation of §49 CFR Part 40. This includes such things as:

- Refusing to consent to testing, to submit a sample, or to sign required forms.
- Refusing to cooperate in any way (for example, refusing to courteously and candidly cooperate in any interview or investigation, including any form of truthfulness, misrepresentation or misleading statements or omissions.);
- Any form of dishonesty in the investigation or testing process.
- Refusing to test again at a time of the Company's choosing whenever any test results in a finding of a dilute sample or reasonable suspicion.
- Failure to accept the referral, to enter into and complete an approved treatment program, or to sign or adhere to the commitments in the Last Chance Performance Agreement.

EMPLOYEE/CONSULTANT ACKNOWLEDGEMENT AND CONSENT TO TESTING

1. I, _____acknowledge receiving a copy of the Company's Drug and Alcohol Policy. Date: _____

2. I voluntarily agree to provide a sample of my Urine for Testing and to submit to any related physical or other examination when I have been requested to do so.

3. I authorize the release of the Test Result (and any other relevant medical information) to the Company for its use evaluation and suitability for continued employment. I also release the Company from all liability arising out of or connected with the testing.

4. I understand that if I refuse to submit to the testing, to give a requested sample(s), to authorize release of the results to the company, and/or if the test results indicate that I do not meet the Company's standards, I may be terminated.

5. I understand that any attempt to switch, adulterate or in any way tamper with the requested sample(s) or to other wise manipulate the testing process will result in termination of employment. I also understand that if my test results are dilute on the second testing, I may be terminated.

I have read this entire policy and each of the above statements ☐Yes ☐No

Signature: _____Date: _____

Exhibit G

Accident Reporting and Investigation Points For Patriot Solids Control

An accident investigation is a quest for the real events take took place. If you do not come very close to the truth in an accident investigation, nothing has been accomplished and the opportunity to improve your work place has been lost. All accidents and incidents at Patriot Solids Control will be investigated and the investigator will be provided with anything required to perform the investigation.

The supervisor where the accident took place is the best person to conduct an accident investigation. That supervisor knows the job; knows the employee/consultant; knows the conditions that were in the department at the time; knows the other employees/consultants nearby. Thus that supervisor is the best possible person to conduct the accident investigation.

With that in mind the following training points will aid in developing a thorough and accurate investigation:

DON'T PLACE BLAME EARLY IN THE INVESTIGATION:
People will not talk when they feel it may hurt them or someone they like. You cannot expect comprehensive, accurate information from people if they feel threatened.

DON'T ASK LEADING QUESTIONS:
Let the people involved tell their own version of what happened. You must be impartial and impersonal if you want to get the truth.

DO CONSIDER PERSONAL TRAITS:
The information you receive from people at the scene may or may not be highly accurate. Consider the personal attitudes of the people involved – do they dislike the company? Are they attempting to avoid being "involved"? Do they normally exaggerate, etc.?

DO ASK PEOPLE FOR THEIR OPINIONS:
Often employees/consultants will not speak up because they are not quite certain what they saw is important or perhaps they are not sure of what they saw. When you ask for their opinion they are more likely to open up.

INTERVIEW WITNESSES AS QUICKLY AS POSSIBLE:
Interview witnesses as quickly as possible after the accident/incident. You will stand the best chances of getting accurate information. Once several people (often who did not see the accident) have given and discussed their opinions of what happened, its not unusual for a person who actually witnessed vital things at the time of the accident to become unsure of what he saw and/or to accept what the vocal people pushed forward as "fact."

GET ALL SIDES:
Ask a number of witnesses for their story so you get a well-rounded picture of the loss.

INVESTIGATE ALL POSSIBLE CLUES:
Don't overlook any aspect of the loss. Some little, almost overlooked fact may lead to the real cause(s) and thus would result in worthwhile preventatives action. Examine equipment, people, environment, weather, etc.

LOOK FOR ALL ACCIDENT CAUSES:
Accidents are seldom totally caused by one thing. They are most often caused by a combination of things that just happen to come together at the same time and overload the system and result in an accident/incident. Everything should be considered. Don't be in such a hurry to pinpoint one accident cause that you overlook vital information such as:

1. Machine condition and maintenance and previous history.
2. Machine guarding.
3. Distractions in the area.
4. Weather conditions.
5. New material or things in the workplace.
6. Level of employee/consultant training.
7. Employee/consultant age, physical conditions, vision, health, medications.
8. Any personal problems that may have been bothering the employee/consultant.
9. Employee/consultant relations in the plant that may be bothering the Employee/consultant.

Consider all these and other things that come to mind. In all probability more than one are involved in every accident you investigate.

QUESTIONABLE INJURIES:
If, as you end an investigation, you feel the injured employee/consultant is not as injured as he/she is stating or the "accident" was very questionable – notify your insurance carrier in writing that you question the accident and request further investigation. Otherwise, your company may pay the price in future years with increased insurance premiums and a poor safety rating.

If it is the type of accident that is often questioned such as a back injury and your investigation shows it to be legitimate, pass that information along, too.

LOSS CAUSED BY OTHERS:
In making your investigation, you may find that a defective piece of equipment caused the injury. If so, keep the piece of equipment. Do not modify it or fix it. Advise your insurance carrier of your findings. Provide security for the defective equipment until your insurance carrier completes its investigation. Companies sensing a product liability suit have been known to send people to pick up the equipment for anything from "research" to "repair." Once it's gone you may never see it again and you may have lost a very valuable piece of evidence.

IN CONCLUSION:
Be thorough. Be accurate. Be fair.

REPORT THEM ALL:
Any incident, accident, or near miss must be reported to your immediate supervisor immediately. This includes but is not limited to injuries, spills, property damage, and fires. If emergency response is required, call 911 first. If onsite first aid or CPR is needed, the trained person on location should take charge of the situation. Each Patriot Solids Control location has people trained in First aid and CPR. If you are on an oilfield location, report the incident to your supervisor by telephone and then upon instruction by your supervisor, report the incident to the onsite operator's representative. This will allow determination of OSHA reporting requirements. Certain accidents such as death of someone or hospitalization of 3 or more people from one accident require immediate reporting to OSHA. Do not delay in reporting. Lessons learned will immediately be shared throughout the company by the HS&E Department to help prevent similar losses.

Signature & Date:_____

Exhibit H

Acknowledgment Regarding
Trade Secrets and Prior Agreements Limiting Competition

In the industries in which Q'Max America Inc. "Q'Max" operates, it is common for employees to change jobs and work for multiple companies throughout their careers. Q'Max requires that all new employees acknowledge the importance of protecting confidential information and trade secrets belonging to others in the industry.

By signing this Acknowledgment you are acknowledging that you have been instructed to not bring to Q'Max any documents, electronic data, files, emails, or storage devices of any sort which contain information belonging to any of your previous employers. Q'Max has hired you for your experience and qualifications, and has no need or desire for you to disclose any confidential information or trade secrets which are the property of your previous employer. To ensure compliance with Q'Max's policy, please acknowledge below that you have returned all property, including but not limited to, any confidential information or trade secrets, to your previous employer. If you have not already returned the property, please acknowledge your intent to do so promptly and to refrain from using this information, in any way, in the performance of your duties for Q'Max.

☐ I have returned all documents and any other materials belonging to my previous employers and do not currently have any information in my possession, including but not limited to any confidential information or trade secrets.

☐ I have not returned all documents and/or other materials in my possession belonging to my previous employer, however, I will immediately contact my previous employer to seek guidance on whether such documents and materials should be returned or destroyed in accordance with my previous employer's wishes. I understand Q'Max's rule against the use of any such materials in the performance of my duties and promise to follow this policy.

In addition, Q'Max requires that any newly-hired employee disclose any contractual limitations on his or her ability to compete, solicit customers, recruit employees, or otherwise perform any job duties on behalf of Q'Max. Please indicate below whether you have any such agreement.

☐ I do not have any agreement with my previous employer which would limit, in any way, my ability to compete, solicit customers, recruit employees, or otherwise perform my job duties on behalf of Q'Max.

☐ I do have an agreement with my previous employer which may contain limitations on my ability to compete, solicit customers, recruit employees, or otherwise perform my job duties on behalf of Q'Max. I shall immediately

provide a copy of such agreement to Q'Max so that the agreement may be reviewed by appropriate management personnel and legal counsel.

☐ I am not sure if I signed an agreement at my previous employer which would limit my ability to compete, solicit customers, recruit employees or otherwise perform my job duties on behalf of Q'Max. I agree to notify Q'Max immediately if I receive notice from my previous employer of such an agreement.

I acknowledge that the above information is true and correct and that I understand Q'Max's policy regarding trade secrets and prior agreements limiting competition. I understand that any dishonesty or failure to disclose the existence of an agreement with my previous employer could serve as a basis for discipline, up to and including immediate discharge.

_____

Name (Please Print)

_____

Signature

_____

Date

Exhibit I

CONFIDENTIALITY, NON-COMPETE AND NON-SOLICITATION AGREEMENT

This Confidentiality Agreement ("Agreement") is made on _____, between _____ ("Employee") and Q'Max America Inc. (“Employer”).

1. Nature of Employment. Employee desires to be employed by the Employer and, in turn, the Employer desires to employ Employee. Employee will be employed in the position of _____. In consideration of Employee's employment with the Employer and the Employer's promise to provide Specialized Training and Secret and Confidential Information to Employee, the Employer and Employee agree to the following:

2. Access to Secret and Confidential Information. At the inception of this employment relationship, and continuing on an ongoing basis, the Employer agrees to give Employee access to Secret and Confidential Information (including, without limitation. Secret and Confidential Information of the Employer's affiliates and/or subsidiaries) (collectively "Secret and Confidential Information"), which the employee has not had access to or knowledge of before the execution of this Agreement. Secret and Confidential Information includes, without limitation, all of the Employer's technical and business information, whether patentable or not, which is of a confidential, trade secret or proprietary character, and which is either developed by the Employee alone, with others or by others; lists of customers; identity of customers; identity of prospective customers; contract terms; bidding information and strategies; pricing methods or information; computer software; computer software methods and documentation; hardware; the Employer or its affiliates or subsidiaries' methods of operation; the procedures, forms and techniques used in servicing accounts; and other information or documents that the Employer requires to be maintained in confidence for the Employer's continued business success.

3. Access to Specialized Training. At the time this Agreement is made, the Employer agrees to provide Employee with initial and ongoing Specialized Training, which the employee has not had access to or knowledge of before the execution of this Agreement. "Specialized Training" includes the training the Employer provides to its employees that is unique to its business and enhances Employee's ability to perform Employee's job duties effectively. The Specialized Training includes, without limitation, orientation training; operation methods training; and computer and systems training.

4. Agreement Not to Use or Disclose Secret and Confidential Information/Specialized Training. In exchange for the Employer's promises to provide Employee with Specialized Training and Secret and Confidential information. Employee shall not during the period of Employee's employment with the Employer or at any time thereafter, disclose to anyone, including, without limitation, any person, firm, corporation, or other entity, or publish, or use for any purpose, any Specialized Training and Secret and Confidential Information, except as properly required in the ordinary course of the Employer's business or as directed and authorized by the Employer.

5. Duty to Return Employer Documents and Property. Upon the termination of Employee's employment with the Employer, for any reason whatsoever, Employee shall

immediately return and deliver to the Employer any and all papers, books, records, documents, memoranda and manuals, e-mail, electronic or magnetic recordings or data, including all copies thereof, belonging to the Employer or relating to its business, in Employee's possession, whether prepared by Employee or others. If at any time after the termination of employment. Employee determines that Employee has any Secret and Confidential Information in his or her possession or control, Employee shall immediately return to the Employer all such Secret and Confidential Information in Employee's possession or control, including all copies and portions thereof.

6. Best Efforts and Disclosure. Employee agrees that, while he or she is employed with the Employer, Employee shall devote his or her full business time and attention to the Employer's business and shall use Employee's best efforts to promote its success. Further, Employee shall promptly disclose to the Employer all ideas, inventions, computer programs, and discoveries, whether or not patentable or copyrightable, which Employee may conceive or make, alone or with others, during Employee's employment, whether or not during working hours, and which directly or indirectly:

(a) relate to matters within the scope, field, duties or responsibility of Employee's employment with the Employer; or

(b) are based on my knowledge of the actual or anticipated business or interest of the Employer; or

(c) are aided by the use of time, materials, facilities or information of the Employer.

Employee assigns to the Employer, without further compensation, all rights, titles and interest in all such ideas, inventions, computer programs and discoveries in all countries of the world. Employee recognizes that all ideas, inventions, computer programs and discoveries of the type described above, conceived or made by Employee alone or with others within one (1) year after termination of employment (voluntary or otherwise), are likely to have been conceived in significant part either while employed by the Employer or as a direct result of knowledge Employee had of proprietary information. Accordingly, Employee agrees that such ideas, inventions or discoveries shall be presumed to have been conceived during Employee's employment with the Employer, unless and until the contrary is clearly established by the Employee.

7. Inventions. Any and all writings, computer software, inventions, improvements, processes, procedures and/or techniques which Employee may make, conceive, discover, or develop, either solely or jointly with any other person or persons, at any time during the term of this Agreement, whether at the request or upon the suggestion of the Employer or otherwise, which relate to or are useful in connection with any business now or hereafter carried on or contemplated by the Employer, including developments or expansions of its present fields of operations, shall be the sole and exclusive property of the Employer. Employee shall take all actions necessary so that the Employer can prepare and present applications for copyright or Letters of Patent thereof, and can secure such copyright or Letters of Patent wherever possible, as well as reissue renewals, and extensions thereof, and can obtain the record title to such copyright or patents. Employee shall not be entitled to any additional or special compensation or reimbursement regarding any such writings, computer software, inventions, improvements,

processes, procedures and techniques. Employee acknowledges that the Employer from time to time may have agreements with other persons or entities which impose obligations or restrictions on the Employer regarding inventions made during the course of work thereunder or regarding the confidential nature of such work. Employee agrees to be bound by all such obligations and restrictions and to take all action necessary to discharge the obligations of the Employer.

8. Non-Solicitation Restriction.

(a) To protect the Employer's Secret and Confidential Information, and in the event of Employee's termination of employment for any reason whatsoever, whether by Employee or the Employer, it is necessary to enter into the following restrictive covenant, which is ancillary to the enforceable promises between the Employer and Employee in paragraphs 1-7 in this Agreement. Employee covenants and agrees that Employee will not, directly or indirectly, either individually or as a principal, partner, agent, consultant, contractor, employee, or as a director or officer of any corporation or association, or in any other manner or capacity whatsoever, except on behalf of the Employer, solicit business, or attempt to solicit business, in products or services competitive with products or services sold by the Employer, from the Employer's clients or customers, or those individuals or entities with whom the Employer and Employee did business during Employee's employment, including, without limitation, the Employer's prospective or potential customers or clients with whom Employer and Employee marketed or solicited.

(b) The prohibition set forth in paragraph 8(a) in this Agreement shall be for a period of one (1) year after the date of Employee's termination from employment.

9. Non-Competition Restriction. Employee agrees that in order to protect the Employer's Secret and Confidential Information, it is necessary to enter into the following restrictive covenant, which is ancillary to the enforceable promises between the Employer and Employee in paragraphs 1-7 in this Agreement. Employee agrees that for the period Employee is employed with the Employer, and for a period of one (1) year following the termination of Employee's employment, Employee will not within all geographic areas in which Employee did business for Employer, without the prior written consent of the Employer, become interested in any capacity in which Employee would perform similar duties to those performed while at the Employer, directly or indirectly (whether as proprietor, stockholder, director, partner, employee, agent, independent contractor, consultant, trustee, beneficiary, or in any other capacity), in any client of the Employer or in any business selling, providing or developing products or services competitive with products or services sold or maintained by the Employer.

10. Non-Recruitment Restriction. Employee agrees that during Employee's employment, and for a period of one (1) year from the date of any termination of Employee's employment for any reason. Employee will not, either directly or indirectly, or by acting in concert with others, solicit or influence any of Employer’s employees, with whom Employee worked, to leave the Employer's employment to join a competitor.

11. Reformation. If a court concludes that any time period or the geographic area specified in paragraphs 8, 9, and 10 in this Agreement are unenforceable, then the time period will be reduced by the number of months, or the geographic area will be reduced by the

elimination of the overbroad portion, or both, so that the restrictions may be enforced in the geographic area and for the time to the fullest extent permitted by law.

12. Tolling. If Employee violates any of the restrictions contained in paragraphs 8, 9, and 10 in this Agreement, the restrictive period will be suspended and will not run in favor of Employee from the time of the commencement of any violation until the time when the Employee cures the violation to the Employer's satisfaction.

13. Remedies. Employee acknowledges that the restrictions contained in this Agreement, in view of the nature of the Employer's business, are reasonable and necessary to protect the Employer's legitimate business interests and that any violation of this Agreement would result in irreparable injury to the Employer. In the event of a breach or a threatened breach by Employee of any provision in this Agreement, the Employer shall be entitled to a temporary restraining order and injunctive relief restraining Employee from the commission of any breach, and to recover the Employer's attorneys' fees, costs and expenses related to the breach or threatened breach. Nothing contained in this Agreement shall be construed as prohibiting the Employer from pursuing any other remedies available to it for any breach or threatened breach, including, without limitation, the recovery of money damages, attorneys' fees, and costs. These covenants and disclosures shall each be construed as independent of any other provisions in this Agreement, and the existence of any claim or cause of action by Employee against the Employer, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Employer of such covenants and agreements.

14. At-Will Employment. This Agreement does not confer upon Employee any right to continue in the employment of the Employer, nor does it affect in any way the Employer's right to terminate Employee's employment at any time with or without cause. Employee understands and agrees that at all times during Employee's Employer employment, Employee is an at-will employee. Employee also retains the right to discontinue Employee's employment at any time with or without cause.

15. Choice of Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of Texas, and shall be binding upon and enforceable against Employee's heirs and legal representatives and the assignees of any idea, invention or discovery conceived or made by Employee, or encompassed within the scope of this Agreement.

16. Severability. Should a court determine that any paragraph or sentence of this Agreement be too severe, they may limit and reducing it only to the extent necessary to be enforceable under then applicable law.

17. Entire Agreement. This Agreement sets forth the entire agreement between the parties, and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter in this Agreement.

18. Future Employment. If Employee, in the future, seeks or is offered employment by any other Employer, firm, or person. Employee shall provide a copy of this Agreement to the prospective employer before accepting employment with that prospective employer.

19. No Previous Restrictive Agreements. Employee represents that, except as disclosed in writing to the Employer, Employee is not bound by the terms of any agreement with any previous employer or other party to refrain from using or disclosing any trade secret or confidential or proprietary information in the course of Employee's engagement by the Employer or to refrain from competing, directly or indirectly, with the business of such previous employer or any other party. Employee further represents that Employee's performance of all the terms of this Agreement and Employee's work duties for the Employer does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by Employee in confidence or in trust prior to Employee's employment with the Employer, and Employee will not disclose to the Employer or induce the Employer to use any confidential or proprietary information or material belonging to any previous employer or others.

_____	_____
Employee's Signature	Employer Representative's Signature
_____	_____
Employee's Printed Name	Employer Representative's Printed Name
_____	_____
Date	Date

Exhibit J

Disclosure and Consent to Obtain Employee Information

As an applicant for employment or a current employee with Q'Max America Inc. "Q'Max", you are hereby notified that Q'Max intends to conduct an investigation into your background as a condition of your application for employment/continued employment. This information may relate to your past employment history, references, driving record, criminal history, credit history and other information bearing on your character, reputation, personal characteristics and/or mode of living.

The Federal Fair Credit Reporting Act protects certain categories of background information contained in "consumer reports." To the extent that Q'Max procures information on job applicants/employees in "consumer reports" furnished by "consumer reporting agencies," it will comply with all applicable provisions of the Fair Credit Reporting Act.

Under that Act, Q'Max is required to disclose in writing that it may procure information about you from "consumer reports" for purposes of evaluating your job application and suitability for employment or continued employment. As a condition of employment or continued employment, you will be required to authorize Q'Max to obtain such information. If you have questions about the Fair Credit Reporting Act or your rights as a "consumer," you may contact the Federal Trade Commission (see attached).

If Q'Max decides to procure an "investigative consumer report" about you, you have the right to send a written request to Q'Max asking for a disclosure of the nature and scope of the investigation.

By signing below, you certify that Q'Max has provided you with a copy of this Disclosure, that you have read it and understand its terms and that you consent to the procurement of "consumer reports" and "investigative consumer reports" by Q'Max containing information about you. **You agree to release Q'Max and its employees from any liability for any damage which may result from furnishing the requested information or your failure to be hired for the position for which you are applying.**

Applicant Full Name (please print clearly)	Human Resources Signature
Applicant Signature	Date

Please print the information requested below to identify yourself for our 3rd party background provider:

Printed Name: _____
First Middle Last Maiden

Other Names Used: _____

Current and Former Addresses:

From Mo/Yr	To Mo/Yr	Street	City	State	Zip

Date of Birth: _____ Social Security Number: _____

Driver's License Number and State: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01382-CMA

JOSEPH SANCHEZ, on behalf of himself and all similarly situated persons,

Plaintiff,

v.

PALLADIUM EQUITY PARTNERS, LLC; Q'MAX SOLUTIONS INC.; Q'MAX AMERICA INC.; PATRIOT SOLIDS CONTROL; and PATRIOT DRILLING SOLUTIONS,

Defendants.

ORDER RE: PLAINTIFF'S MOTION FOR CONDITIONAL CERTIFICATION OF THE FLSA CLAIM

THIS MATTER came before the Court on Plaintiff's "Motion for Conditional Certification of the FLSA Claim" (the "Motion"). The Court having read the Motion, and being otherwise fully advised in the premises hereby ORDERS the following:

1. This action shall be conditionally certified as a collective action pursuant to 29 U.S.C. §216(b). The collective action is defined as follows:

> All individuals who, during any time within the past three years, worked for some or all of the Defendants in the United States and were classified as non-employees pursuant to either any version of the Master Service Agreement (Exhibit C to the Motion) or any similar contract.

2. The proposed "Notice of Collective Action Lawsuit" and "Consent to Join" forms attached hereto are approved.

3. Within twenty-one (21) days from the date this Order is entered,

Defendants shall provide to Plaintiff's counsel a list of all potential collective action members. The list shall include each potential class member's dates of work for Defendants, last known U.S. Mail address(es), email address(es) and telephone number(s).

4. Within twenty-one (21) days after receiving this list, Plaintiff shall send the attached forms by email, if available, and by First Class U.S. Mail to the last known addresses of each of the individuals identified pursuant to paragraph 3 above.

5. Any individuals to whom notice is sent shall "opt-in" by written consent to this Court within sixty (60) days from the postmark date of the notice.

DONE AND SIGNED this _____ day of _____, 2017.

BY THE COURT

District Court Judge

[*insert mailing date*]

NOTICE OF COLLECTIVE ACTION LAWSUIT

Sanchez, et al. v. Palladium Equity Partners, LLC, et al., 1:17-cv-01382-CMA
United States District Court, District of Colorado

TO: [*INSERT NAME*]

PLEASE READ THIS NOTICE CAREFULLY

INTRODUCTION

This Notice informs you of the existence of a collective action lawsuit seeking unpaid wages under federal law. You have a right to participate in the lawsuit.

DESCRIPTION OF THE LAWSUIT

In June 2017, Joseph Sanchez ("Plaintiff") started this lawsuit against defendants Palladium Equity Partners, LLC, Q'Max Solutions Inc., Q'Max America Inc., Patriot Solids Control, and Patriot Drilling Fluids ("Patriot/Q'Max"). The lawsuit is proceeding in the United States District Court in Denver, Colorado and is assigned to United States District Judge Christine M. Arguello.

The lawsuit alleges that Patriot/Q'Max violated federal wage law by wrongfully designating certain oil and gas rig workers as "independent contractors" rather than "employees." The lawsuit further alleges that, as a result of this wrongful classification, Patriot/Q'Max failed to pay these oil and gas rig workers extra overtime compensation for hours worked over 40 per week.

The lawsuit seeks the recovery of unpaid overtime premium compensation during the last three years plus liquidated damages and attorney's fees and expenses.

The lawsuit is in the early stages. The Federal Court has not yet decided who will win.

RETALIATION PROHIBITED

If you join the lawsuit, federal law prohibits Patriot/Q'Max from retaliating against you as a result of your participation.

HOW TO JOIN THE LAWSUIT

You may join the lawsuit by completing the enclosed "Consent to Join" form and returning it in the enclosed envelope to one of the Plaintiff's lawyers at the following address:

The Law Offices of Brian D. Gonzales, PLLC
2580 East Harmony Road, Suite 201
Fort Collins, CO 80528

You may also email a copy of the form to BGonzales@ColoradoWageLaw.com or text a clear picture to 970-214-0562. The form must be returned by ***[insert date 60 days after initial mailing date]***. If you fail to meet this deadline, you will not be allowed to participate in the lawsuit.

EFFECT OF JOINING THE LAWSUIT

If you join the lawsuit, you will be bound by the judgment of the Federal Court on all issues, including the reasonableness of any settlement. If the Federal Court finds in favor of Plaintiff, you will receive a money payment. If the Federal Court finds in favor of Patriot/Q'Max, you will receive nothing.

EFFECT OF NOT JOINING THE LAWSUIT

If you do not join the lawsuit, you will not be affected by any judgment or settlement resulting from the lawsuit.

YOUR LEGAL REPRESENTATION IF YOU JOIN

If you join the lawsuit, you will be represented by The Law Offices of Brian D. Gonzales, PLLC, 2580 East Harmony Road, Suite 201, Fort Collins, CO 80528 (www.coloradowagelaw.com; (970) 214-0562, BGonzales@ColoradoWageLaw.com) and Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025 (www.winebrakelaw.com; (215) 884-2491, ASantillo@WinebrakeLaw.com).

You will not be required to pay any fees to the above law firms. The firms have taken this case on a "contingency" basis. If the lawsuit is unsuccessful, the firms will receive nothing. If the lawsuit results in a recovery, the firms will ask the Federal Court to award legal fees separate and apart from your recovery.

Please call, text or email the above law firms if you have any questions or desire any additional information about the lawsuit.

THIS NOTICE HAS BEEN AUTHORIZED BY UNITED STATES DISTRICT JUDGE CHRISTINE M. ARGUELLO. THE COURT HAS TAKEN NO POSITION REGARDING THE LAWSUIT'S MERITS.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:17-cv-01382

JOSEPH SANCHEZ, on behalf of himself and all similarly situated persons,

Plaintiff,

v.

PALLADIUM EQUITY PARTNERS, LLC; Q'MAX SOLUTIONS INC.; Q'MAX AMERICA INC.; PATRIOT SOLIDS CONTROL; and PATRIOT DRILLING SOLUTIONS,

Defendants

CONSENT TO JOIN

I consent, pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), to become a party plaintiff in the above-captioned action. I agree to be represented by Winebrake & Santillo, LLC (Dresher, PA) and Brian D. Gonzales, PLLC (Fort Collins, CO). I understand that I will be bound by the judgment of the Court on all issues in this action, including the fairness of any settlement. **If you do not hear from us after you return this form, please contact us to confirm receipt.**

_____ _____
Signature Date

_____
Name (Please Print Neatly)

_____
Address

_____
City, State, Zip Code

_____
Phone Number

_____
Email Address

Return to:

The Law Offices of Brian D. Gonzales, PLLC
2580 East Harmony Road, Suite 201
Fort Collins, CO 80528
Phone/Text: (970) 214-0562
Email: BGonzales@ColoradoWageLaw.com