

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

ROQUE GARZON on behalf of himself and  
others similarly situated

Plaintiff,

v.

MOBILE HI-TECH WHEELS, LLC et al,

Defendants.

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Case No. 21STCV15396

**CLASS AND REPRESENTATIVE  
ACTION SETTLEMENT AGREEMENT**

This Class and Representative Action Settlement Agreement (“Settlement Agreement,” “Settlement” or “Agreement”) is made and entered into between Plaintiff Roque Garzon (“Plaintiff” or “Class Representative”) on the one hand, individually and on behalf of the Settlement Class and PAGA Members (as defined below), by and through his counsel of record, Bibiyan Law Group, P.C., (“Class Counsel”), and Defendants Wheel Pros, LLC (“Wheel Pros”) and Mobile Hi-Tech Wheels, Inc. (“MHT”) (collectively, “Defendants”) on the other hand, by and through their counsel of record, Freeburg & Granieri, APC, and Seyfarth Shaw LLP, subject to the approval of the Court, as provided below. This Settlement Agreement is intended by Plaintiffs and Defendants to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions herein, as follows:

1. **Definitions.**

As used herein, for the purposes of this Settlement Agreement only, the following terms shall be defined as set forth below:

- 1.1 “Action” refers to the civil action entitled: *Roque Garzon, an individual and behalf of others similarly situated, Plaintiff, v. Mobile Hi-Tech Wheels, LLC; Wheel Pros, Inc.; Wheel Pros, LLC; Wheel Pros Holdings, LLC; Wheel Pros Holdings, LP; Wheel Pros Intermediate, Inc.; ACS Staffing, Inc.; Clearlake Capital Group, L.P.; Jody Groce; Randy White; and Does 1-100, inclusive, Defendants*, Case No. 21STCV15396, in the Superior Court of California, County of Los Angeles.
- 1.2 “Class” or “Class Members” refers to all current and former non-exempt employees of either Defendants in the State of California including all temporary employees supplied to either Defendants by any staffing agency at any time between April 22, 2017 through date of preliminary approval of the settlement. It shall be an opt-out class.
- 1.3 “Class Counsel” refers to Bibiyan Law Group, P.C.
- 1.4 “Class Counsel Fees and Costs Award” refers to costs incurred and attorneys’ fees sought by Class Counsel and agreed upon by the Parties for Class Counsel’s litigation and resolution of this Action, subject to Court approval.
- 1.5 “Class Settlement Notice” refers to the form of direct-mail notice to Class Members substantially in the form attached hereto as **Exhibit A**, as may be modified by the Court, entitled the Notice of Settlement of Class Action And Fairness Hearing.
- 1.6 “Class Member Payment” shall refer to the amount paid to a Settlement Class Member who does not submit a timely or valid

request to opt out of the settlement, as set forth in Paragraph 16 below.

- 1.7 “Class Period” refers to April 22, 2017 through the date of preliminary approval of this Settlement. The Class Period shall be the Release Period.
- 1.8 “Class Representative” refers to Roque Garzon.
- 1.9 “Operative Complaint” refers to the first amended complaint filed by Plaintiff in the Action.
- 1.10 “Opt Out Deadline” or “Response Deadline” refers to a date that is forty-five (45) calendar days after the date that the Notice Packet is initially mailed to Class Members, and is the deadline by which Class Members’ requests to opt out or objections must be postmarked in order to be timely, unless a Class Member’s notice is re-mailed, in which case the Class Member shall have an additional fifteen (15) calendar days from re-mailing, or forty-five (45) calendar days from the initial mailing, whichever is later.
- 1.11 “Fairness Hearing” refers to the hearing at which the Court will make a final determination whether the terms of the Settlement Agreement are fair, reasonable, and adequate for the Class and meet all applicable requirements for approval.
- 1.12 “Final Approval Order” refers to the final order by the Court approving the Settlement following the Fairness Hearing.
- 1.13 “Effective Date” refers to the date the Court’s order approving the settlement and judgment thereon (“Judgment”) becomes final. For purposes of the Settlement Agreement, the Court’s Judgment “becomes final” upon the later of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court’s Judgment (i.e., 61 calendar days after notice of entry of the Court’s Judgment); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.
- 1.14 “Gross Settlement Amount” (also referred to herein as “GSA”) refers to the maximum settlement payment Defendants shall be obligated to make: Two Million, One Hundred Thousand Fifty Dollars And No Cents (\$2,150,000.00). The GSA shall include all Class Member Payments made to Settlement Class Members, the Court-approved Service Award to the Class Representative, the Court-approved Settlement Administration Costs, the Court-

approved Class Counsel Fees and Costs Award, and the Court-Approved PAGA Amount for a release of all Private Attorneys General Act claims as set forth below. The GSA is non-reversionary.

- 1.15 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.16 “Net Settlement Amount” (also referred to herein as “NSA”) shall be defined as the GSA minus the Court-approved Service Award to the Class Representative, the Court-approved Settlement Administration Costs, the Court-approved Class Counsel Fees and Costs Award, and the PAGA Amount. The NSA is the maximum amount that shall be available for distribution to and on behalf of Class Members for Class Member Payments.
- 1.17 "Notice Packet" refers to the Class Action and Representative Settlement Notice as set forth herein in the form substantially similar attached as **Exhibit "A,"** and subject to approval by the Court.
- 1.18 “Objection Deadline” refers to a date that is forty-five (45) calendar days after the date that the Notice Packet is initially mailed to Class Members, and is the deadline by which any objections must be postmarked for service to the Settlement Administrator in order to be timely, unless a Class Member’s notice is re-mailed, in which case the Class Member shall have an additional fifteen (15) calendar days from re-mailing, or forty-five (45) calendar days from the initial mailing, whichever is later.
- 1.19 “PAGA Period” refers to April 1, 2020 through the end of the Class Period.
- 1.20 “PAGA Amount” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) and PAGA Members in connection with the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”). The Parties have agreed that One Hundred Thousand Dollars (\$100,000) of the Gross Settlement Amount will be allocated to the resolution of the State of California’s and any PAGA Members’ claims arising under PAGA. Pursuant to PAGA, 75%, or Seventy Thousand Dollars (\$75,000), of the PAGA Amount will be paid to the LWDA (“LWDA Payment”) , and 25%, or Twenty-Five Thousand Dollars (\$25,000), of the PAGA Amount will be paid to PAGA Members (“PAGA Member Payment”). The pro rata portion of the PAGA Payment made to PAGA Members shall be determined by dividing the total number of pay periods worked during the

PAGA Period into the PAGA Payment made to PAGA Members to arrive at a value per pay period for each eligible PAGA Member. The value per pay period shall be multiplied by the number of pay periods worked by each PAGA Member during the PAGA Period.

- 1.21 “PAGA Members” refers to all current and former non-exempt employees of either Defendants in the State of California, including all temporary employees supplied to either Defendants by any staffing agency at any time between April 1, 2020 through the end of the Class Period.
- 1.22 “PAGA Notice” means Plaintiff’s letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a) dated April 21, 2021.
- 1.23 "Parties" refers to Plaintiff Roque Garzon, and Defendants Wheel Pros, LLC and Mobile Hi-Tech Wheels, Inc. collectively.
- 1.24 “Plaintiff’s Released Claims” are those claims defined in Paragraph 13.3 that are released solely by Plaintiff against the Released Parties.
- 1.25 "Preliminary Approval" refers to the date the Court grants preliminary approval of the Settlement.
- 1.26 "Preliminary Approval Order" refers to the Court's Order granting Preliminary Approval of the Settlement.
- 1.27 “Released Claims” are those claims defined in Paragraph 13 that are released by Settlement Class Members, the State of California, and PAGA Members.
- 1.28 “Released Parties” means: Defendants Wheel Pros and MHT, and each of their and their predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and assigns, and all of their owners, shareholders, members, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.
- 1.29 “Service Award” refers to the Court’s award of a monetary payment to Plaintiff for his services as Class Representative as described in Paragraph 7, to be paid from the Gross Settlement Amount, and in return for executing Plaintiff’s Released Claims as set forth in Paragraph 13.3.
- 1.30 "Settlement" refers to the settlement of the Action on behalf of the Settlement Class under the terms and conditions set forth in this Settlement Agreement.

- 1.31 “Settlement Administration Costs” refers to the costs that the Parties agree to pay the Settlement Administrator, subject to Court approval, for its fees and costs to perform the notice, claims administration, and distribution functions further described in this Settlement Agreement. The Parties anticipate that the Settlement Administration Costs will not exceed \$30,000.00.
- 1.32 “Settlement Administrator” refers to the third-party administrator mutually selected by the parties, subject to Court approval, to perform the notice, claims administration, and distribution functions further described in this Settlement Agreement. The Parties agree to use Phoenix Settlement Administrators subject to Court approval. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Settlement Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 1.33 “Settlement Class” or “Settlement Class Member” or “Participating Class Member” refers to all Class Members, or individual Class Members as defined in Paragraph 1.2 who do not request to opt out of the Settlement pursuant to Paragraph 16 of this Settlement Agreement.
- 1.34 “Workweeks” means the number of weeks that a Class Member was employed by and worked for the Defendants as non-exempt employees during the Class Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

## **2. Procedural History and Recitals.**

- 2.1 On or about April 21, 2021, Plaintiff sent a letter to the LWDA thereby authorizing him to represent the State of California as a private attorney general for the purposes of PAGA after the expiration of the applicable 65-day exhaustion period. Plaintiff Garzon filed the original complaint in the Action on or about April 22, 2021.
- 2.2 On or about August 2, 2021, Plaintiff filed a First Amended Complaint adding a cause of action under PAGA.
- 2.3 In July 2021, Plaintiff dismissed without prejudice all of the non-individual defendants with the exception of Wheel Pros and MHT. In September 2021, Plaintiffs dismissed without prejudice Jody Groce and Randy White. As a result, the only remaining defendants in the Action are Wheel Pros and MHT.

- 2.4 Plaintiff's First Amended Complaint alleges causes of action for: (1) failure to pay overtime; (2) failure to pay minimum wage; (3) failure to authorize and permit meal breaks; (4) failure to authorize and permit rest breaks; (5) waiting time penalties; (6) wage statement violations; (7) failure to timely pay all wages; (8) failure to reimburse for business-related expenditures; (9) unfair business practices; (10) penalties under Labor Code section 210; (11) penalties under Labor Code section 226.3; (12) penalties under Labor Code section 558; (13) penalties under Labor Code section 1174.5; (14) penalties under Labor Code section 1197.1; and (15) PAGA penalties under Labor Code section 2699. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending his PAGA Notice.
- 2.5 On June 10, 2021, the Parties participated in a mediation session before mediator Michael Dickstein, an experienced mediator who has mediated numerous wage-hour class actions. After the mediation session, the Parties reached the basic terms of a settlement, and thereafter signed a binding Memorandum of Understanding and agreed to prepare this formal settlement agreement, subject to Court approval.
- 2.6 Defendants, and each of them, deny each of the claims in the Operative Complaint, and further deny that they are liable to Plaintiff or the Class, or the State of California, or the PAGA Members, and further deny that, for any purpose other than settling the Action, this Action is appropriate for class or representative action treatment.
- 2.7 Prior to mediation Plaintiff obtained, through informal discovery: (1) time and payroll records for 25% of the estimated 715 Class Members; (2) data points, including average rates of pay, total number of Workweeks worked by Class members through mediation, the number of separated Class Members, the number of Class Members eligible for waiting time penalties, the number of PAGA Members, and the number of hours worked, among others; (3) all relevant wage and hour policy documents and employee handbooks for the Class Period, Plaintiff's personnel records and employment files; and (4) last known contact information for Class Members. The Parties agree that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*"). Class Counsel represent that they have thoroughly investigated the class and PAGA claims against Defendants. Class Counsel represent that they have conducted their own investigation into the underlying facts, events, and issues

related to the subject matter of this Action. Class Counsel represent that they have further undertaken an extensive analysis of the legal principles applicable to the claims asserted against Defendants, and the potential defenses thereto. Both Class Representative and Defendants have had an opportunity to evaluate their respective positions on the merits of the claims asserted.

- 2.8 Class Counsel also has engaged in intensive arms-length negotiations with counsel for Defendants with a view toward achieving substantial benefits for the Class, the State of California, and the PAGA Members, while avoiding the cost, delay and uncertainty of further litigation, trial, and appellate review.
- 2.9 As a consequence of said negotiations, and of Class Counsel's investigation, analysis and discovery, Plaintiff and Class Counsel determined to enter into this Settlement Agreement on the terms and conditions hereinafter set forth, believing such Settlement to be fair, reasonable, and adequate and in the best interests of Class Members, the State of California, and the PAGA Members. Plaintiff and Class Counsel have determined to execute this Settlement Agreement and urge approval by the Court of the proposed Settlement after considering: (1) the substantial factual and legal defenses asserted by Defendants to the claims asserted in the Action; (2) the potential difficulties Plaintiff and Class Members would encounter in establishing the elements of their claims; (3) the substantial benefits that Class Members, the State of California and the PAGA Members shall receive pursuant to the proposed Settlement; (4) the fact that the proposed Settlement ensures that Class Members shall receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims to be litigated successfully through trial and appeal; and (5) the fact that the proposed Settlement allows persons who would otherwise fall within the definition of the Class, if they so desire, to opt out of the Settlement and individually pursue the claims alleged in the Action.
- 2.10 As set forth above, without admitting any wrongdoing or liability, Defendants are willing to agree to the terms of the proposed Settlement provided that all of the Released Claims (as defined below) are settled and compromised, in order to fully resolve all issues relating to the subject matter of the Action.
- 2.11 The Court has not granted class certification in this Action.
- 2.12 The Parties, Class Counsel and Defense Counsel represent that they are aware of two other pending matters asserting PAGA claims that will be extinguished or affected by the Settlement: *Julio Quintana v. Wheel Pros, Inc., Mobile Hi-Tech Wheels, Inc., and Mobile Hi-*



*Tech Wheels, LLC*, Los Angeles Superior Court Case No. 21CMCV00160 (filed on June 24, 2021) and *Robert De La Barcena v. Wheel Pros, Inc., Wheel Pros, LLC, Mobile Hi-Tech Wheels, Inc., and Mobile Hi-Tech Wheels, LLC*, Los Angeles Superior Court Case No. 21CMCV00332 (filed on December 8, 2021).

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, and of the release and dismissal of all Released Claims, Plaintiff, on behalf of himself and as the Class Representative on behalf of the Class, and as a private attorney general, on behalf of the State of California and the PAGA Members, Class Counsel, and Defendants agree to the terms and provisions of this Settlement Agreement, subject to the approval of the Court.

**3. Stipulation to Certification and Limitation on Effect of Settlement.**

3.1 The Settlement shall not constitute, in this or any other proceeding, an admission of any kind by Defendants, including without limitation, that certification of a class is appropriate or proper or that Plaintiff could establish any of the requisite elements for class or representative action treatment of any of the claims in the Action. For purposes of this Settlement only, the Parties stipulate to the certification of the Class under California Code of Civil Procedure Section 382. In the event that the Settlement is not finally approved, or the Settlement is otherwise terminated, Defendants expressly reserve all rights to challenge certification of a class and the appropriateness of representative action treatment on all available grounds.

**4. Establishment of the GSA.**

4.1 This Settlement shall be made on a non-claims-made basis and will be non-reversionary. As to any Class Member who timely and validly submits a request to opt out, as set forth herein, the GSA will be reduced by the amount allocated to that individual. Defendants shall pay a total of no more than the GSA, except as provided in Paragraph 4.2, below.

4.2 Defendants estimate that there were approximately 77,881 workweeks through August 31, 2022 worked by the Class Members. If, as of the close of the Class Period, the actual number of workweeks worked by Class Members during the Class Period is more than one hundred ten percent (110%) of this estimate – i.e., if there are 85,699 or more workweeks worked by Class Members during the Class Period – then either the GSA will be increased by the same proportion above 110% of this estimate using the Workweek Value, or Defendants, in their sole discretion, may elect to cut off the Class Period and the PAGA Period as of the date the

total workweeks worked by Class Members equals 85,669 workweeks. For the purposes of this escalation clause, the Workweek Value shall be calculated by dividing the GSA by the estimate of the current workweeks, meaning that the parties agree that the Workweek Value shall be \$27.61 ( $\$2,150,00 / 77,881$ ). Thus, for example, if the workweeks worked by Class Members during the Class Period is 86,000, Defendant may choose to either (i) increase the GSA by \$9,138.91 ( $(86,000 - 85,669) \times \$27.61$ ); or (ii) end the Class Period and PAGA Period on the date on which 85,668 workweeks are reached.

- 4.3 Payment by Defendants pursuant to this Settlement Agreement shall settle for Settlement Class Members, the State of California, and PAGA Members, all Released Claims between the Released Parties and Settlement Class Members, the State of California, and the PAGA Members, including all Class Member Payments, all PAGA penalty payments to the LWDA and PAGA Members, the Court-approved Service Awards to the Class Representatives, the Court-approved Settlement Administration Costs, and the Court-approved Class Counsel Fees and Costs Award.

**5. Calculation of the NSA and Distribution of Settlement Proceeds.**

- 5.1 This Settlement shall be a “non-claims-made” settlement. Each Settlement Class Member will be entitled to a share of the NSA for the individual Class Member’s Payment in accordance with the formula set forth below. Payments will be made from the NSA only to Settlement Class Members, as set forth herein. Assuming the Court approves the maximum amounts sought to be deducted from the GSA, the NSA is estimated to be \$1,337,500.00.

- 5.1.1 Each Settlement Class Member will be paid a portion of the NSA in accordance with the following formula:

- 5.1.1.1 The pro rata portion of the NSA to be distributed to each Settlement Class Member shall be determined by dividing the total number of workweeks worked during the Class Period into the NSA to arrive at a value per workweek for each eligible Settlement Class Member. The value per workweek shall be multiplied by the number of workweeks worked by each Settlement Class Member during the Class Period. For purposes of payment, workweeks shall be determined based on hire dates, termination dates, and re-hire dates, as applicable.

5.1.1.2 The pro rata portion of the PAGA Payment made to PAGA Members shall be determined by dividing the total number of pay periods worked during the PAGA Period into the PAGA Payment made to PAGA Group Members to arrive at a value per pay period for each eligible PAGA Member. The value per pay period shall be multiplied by the number of pay periods worked by each PAGA Member during the PAGA Periods.

5.1.2 The amount distributed to Settlement Class Members in the form of Class Member Payments will not exceed the NSA. If a Class Member timely and validly submits a request to opt out of the settlement, as set forth herein, the GSA will not be reduced, and the the amount allocated to that individual shall be apportioned to the Settlement Class Members consistent to the provisions of Paragraph 5.

5.2 Payments to Class Members pursuant to this Settlement Agreement are not intended by the Parties to be compensation for purposes of determining eligibility, vesting, participation, or contributions with respect to any employee benefit plan. For purposes of this Agreement, the term “benefit plan” means every ERISA “employee benefit plan,” as defined in the Employee Retirement and Income Security Act of 1974 (“ERISA”), 29 U.S.C. section 1002(3). The term also includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any such plan is considered an ERISA employee benefit plan.

## **6. Class Counsel Fees and Costs Award.**

Class Counsel shall move for Class Counsel Fees and Costs Award contemporaneous with the motion for the Final Approval Order requesting, and to which Defendants agree to not oppose, Class Counsel Fees that is equal to or less than 35% of the GSA (i.e. \$752,500.00 unless escalated pursuant to paragraph 4.2 of this Agreement.), plus a Costs Award up to \$40,000.00 Defendants retain the right to oppose a request for Class Counsel Fees exceeding thirty-five percent of the GSA or a request for Costs Award in excess of \$40,000.00. If the Court awards a lower amount of Class Counsel Fees or Costs Award requested by Class Counsel, the other terms of this Agreement shall apply. Should the Court approve Class Counsel Fees or Costs Award in an amount less than that set forth herein, the unapproved portion or portions shall revert to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5 of this Settlement Agreement. The awards of Class Counsel Fees or Costs Award in the amounts

sought is not a material term of this Agreement and the award of any of these items at less than requested by Class Counsel does not give rise to a basis to abrogate this Agreement.

**7. Service Awards.**

Class Counsel shall file a motion requesting a Service Award, to which Defendants agree not to object, of up to \$7,500 to Plaintiff from the GSA in consideration for serving as Class Representative and in exchange for Plaintiff's Released Claims. Defendants retain the right to object to a request for a Service Award in excess of this amount. If the Court awards a lower amount for the Service Award requested by Plaintiff's counsel, the other terms of this Agreement shall apply. Should the Court approve a Service Award in an amount less than that set forth herein, the unapproved portion or portions shall revert to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5 of this Settlement Agreement. The award of a Service Award in the amount sought is not a material term of this Agreement and the award of an amount less than requested by Plaintiff does not give rise to a basis to abrogate this Agreement.

**8. PAGA Amount.**

Subject to Court approval, the Parties agree that the amount of One Hundred Thousand Dollars (\$100,000) of the GSA will be allocated to the resolution of any claims arising under PAGA. Pursuant to PAGA, 75%, or Seventy Five Thousand Dollars (\$75,000), of the PAGA Amount will be paid to the LWDA ("LWDA Payment"), and 25%, or Twenty Five Thousand Dollars (\$25,000), of the PAGA Amount will be paid to PAGA Members based on the number of pay periods worked by any individual PAGA Member in relation to the number of pay periods worked by all PAGA Members during the PAGA Period ("PAGA Members Payment"). Defendants retain the right to oppose a request for a PAGA Amount exceeding this amount. If the PAGA Amount approved by the Court is less than the specific amount, it does not give rise to a basis to abrogate this Settlement Agreement. Any unapproved amount of the PAGA Amount shall be allocated to the NSA and be apportioned to Settlement Class Members as described in Paragraph 5 of this Settlement Agreement.

**9. Costs of Settlement Administration.**

The Parties agree to mutually select Phoenix Settlement Administrators as the Settlement Administrator in this Action. This administration duty shall include without limitation, setting up an escrow account for funding of the Settlement, obtaining tax identification number(s) for Defendants applicable to the Settlement, calculating the Class Member Payments, PAGA Member payments, performing an initial National Change of Address ("NCOA") search upon receipt of the Class Member mailing addresses, mailing the Notice Packets, performing one skip trace on Notice Packets, returned as undeliverable, establishing a hotline telephone number to communicate with Class Members about the Settlement, reviewing and

processing requests to opt out of the settlement, reviewing and submitting to Class Counsel and Defendants' counsel any received objections, mailing the Class Members Payments and tax forms to the Settlement Class Members, and making all required distributions to Settlement Class Members, the State of California and PAGA Members. The Settlement Administrator will report payment of the individual Class Member Payments and PAGA Members to all required taxing and other authorities, and requisite reporting documentation to the applicable taxing agencies, and issue Internal Revenue Service Forms 1099. The Settlement Administrator will establish a Qualified Settlement Fund ("QSF"), pursuant to U.S. Treasury Regulation Section 468B(g) of the Internal Revenue Service for the purposes of administering the Settlement. All Settlement Administration Costs shall be taken from the GSA. The Parties expect Settlement Administration Costs to not exceed \$30,000.00. Any unapproved amount of Settlement Administration Costs shall be allocated to the NSA and apportioned to the Class Members as described in Paragraph 5 of this Settlement Agreement. The award of Settlement Administrator Costs in the amount sought is not a material term of this Agreement and the award of an amount less than requested by Plaintiffs does not give rise to a basis to abrogate this Agreement. Any unapproved amount of the Settlement Administration Costs shall be allocated to the NSA and be apportioned to Class Members as described in Paragraph 5 of this Settlement Agreement.

The Settlement Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees and Costs Award and Service Awards, the Final Approval and the Judgment. The Settlement Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

#### **10. Payment Procedure.**

- 10.1 Funding the Settlement. Within 14 (fourteen) calendar days after the Effective Date, Defendants will deposit money into an account, through the Settlement Administrator, in an amount equal to the GSA.
- 10.2 Employer Identification Number. The Settlement Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 10.3 Qualified Settlement Fund. The Settlement Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

- 10.4 Payments to Class Members, Class Counsel, Class Representatives, and Taxing Authorities. Within 7 (seven) calendar days after the funding of the Settlement, the Settlement Administrator will pay: (1) the NSA to the Settlement Class Members per the terms of this Settlement Agreement and the Final Approval Order; (2) the Court-approved Class Counsel Fees and Costs Award; (3) the Court-approved Settlement Administration Costs; (4) the Court-approved Service Awards to the Class Representatives; and (5) the Court-approved PAGA Amount to the proper State authority and the PAGA Members. The Settlement Administrator shall also, within the time periods prescribed by law and/or regulations, remit all applicable tax withholdings (if any) to the appropriate taxing authorities. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 10.5 Uncashed Class Payments. In the event that a Class Member Payment check as calculated set forth in Paragraph 5 is not cashed within 180 calendar days from the date initially mailed by the Settlement Administrator, such funds shall escheat to the State and shall be sent by the Settlement Administrator to the State Controller's Office, Unclaimed Property Division, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). In such event, release of Released Claims will remain binding upon the affected Settlement Class Member. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Settlement Administrator will cancel all checks not cashed by the void date.
- 10.6 Returned Checks. With respect to those Settlement Class Members whose checks are undelivered without USPS forwarding address, the Settlement Administrator must investigate and search for their mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact with Settlement Class Members. Within 7 days of receiving a returned check the Settlement Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the steps provided above. The Settlement Administrator need not take further steps to deliver checks to Class Settlement Members whose re-mailed checks are returned as undelivered. The Settlement Administrator shall promptly send a replacement check to any Settlement Class Member whose original check was lost or misplaced, requested by the Settlement Class Member prior to the void date, unless the Settlement Class Member's check has already been cashed.

**11. Tax Treatment.**

- 11.1 Tax Treatment of Claimed Portion of Settlement Payments. One-third (1/3) of the Net Settlement Amount attributable to the Class settlement award will be allocated to the settlement of disputed claims for wages, and two-thirds (2/3) of the Net Settlement Amount attributable to the Class Settlement Award will be allocated to the settlement of disputed non-wage claims – i.e. penalties and interest. The Settlement Administrator will issue to Settlement Class Members a form W-2 for all amounts attributable disputed wage claims and a form 1099 for all amounts attributable to disputed non-wage claims. The Settlement Administrator will issue to the PAGA Members a form 1099 for all amounts attributable PAGA Payments. Settlement Class Members and PAGA Members shall assume full responsibility and liability for the payment of taxes due on such amounts.
- 11.2 Tax Treatment of Class Representative Service Award. Plaintiff will receive an IRS Form 1099 for his individual Service Award, and will be responsible for payment of any taxes owing on said amount. Plaintiff shall assume full responsibility and liability for the payment of taxes due on such Service Award
- 11.3 Tax Treatment of Attorneys' Fees And Cost Award. Class Counsel will receive an IRS Form 1099 for any amount awarded to Class Counsel in the Class Counsel Fees or Costs Awards and will be responsible for payment of any taxes owing on said amounts. Class Counsel shall assume full responsibility and liability for the payment of taxes due on such amounts.
- 11.4 No Tax Advice. Defendants are not giving any tax advice in connection with the Settlement or any payments to be made pursuant to this Settlement. Each Settlement Class Member and PAGA Member agrees to indemnify, and hold harmless Defendants from any liability for taxes, fees, costs, or assessments resulting from his or her failure to timely pay his or her share of taxes, interest, fees, or penalties owed.

**12. Resolution of Disputes Relating to Amounts Owed to a Settlement Class Member.**

A Settlement Class Member shall have 45 days to dispute the number of workweeks listed on the Class Settlement Notice. If a Settlement Class Member timely disputes the number of workweeks listed on the Class Settlement Notice, the Settlement Administrator will review any documentation provided by the Settlement Class Member, as well as records for the Settlement Class Member provided by Defendants, to determine whether there was an error in the number of

workweeks calculated, and adjust any payment to be allocated if necessary. In the absence of definitive documentation provided by the Settlement Class Member, Defendants' time and pay records shall be determinative for purposes of calculating the number of workweeks during the Class Period, and number of pay periods during the PAGA Period.

**13. Releases.**

Upon full payment by Defendants of the GSA to the Settlement Administrator, and in exchange for the consideration set forth in this Settlement Agreement, Plaintiff, the Settlement Class Members, and PAGA Members agree to release those claims set forth herein as applicable.

13.1 Release by Settlement Class Members: All Settlement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, and irrespective of theory of recovery, that were or could have been reasonably brought based on the facts or claims alleged in the Operative Complaint, arising during the Class Period, irrespective of recovery. The released claims include, but are not limited to, claims for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock work), failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or properly compensate meal or rest break premiums, failure to reimburse for business-related expenses, failure to furnish accurate wage statements, record keeping violations, failure to pay wages timely during employment, failure to pay final wages upon separation of employment, claims related to pre and post-shift work, failure to properly calculate the regular rate of pay, claims derivative and/or related to these claims, liquidated damages, and conversion of wages. The above release excludes claims for penalties under PAGA.

13.2 Release by PAGA Members: All PAGA Members and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint and the PAGA Notice,



irrespective of theory of recovery, including, but not limited to, claims for civil penalties for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock work), failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or properly compensate meal or rest break premiums, failure to reimburse for business-related expenses, failure to furnish accurate wage statements, record keeping violations, failure to pay wages timely during employment, failure to pay final wages upon separation of employment, claims related to pre and post-shift work, failure to properly calculate the regular rate of pay, claims derivative and/or related to these claims, liquidated damages, and conversion of wages.

- 13.3 In addition to the foregoing releases, Plaintiff agrees to a general release of all claims, known or unknown, in favor of Defendants and the Released Parties. This general release will include a waiver of rights under section 1542 of the California Civil Code. Plaintiff makes this release understanding the significance of this waiver. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

- 13.4 Plaintiff warrants and represents that he has not assigned or transferred, to any person or entity any of Plaintiff’s Released Claims or any rights, claims, or causes of action arising out of Plaintiffs’ Released Claims. In addition, Plaintiff shall defend, hold harmless, and indemnify the Released Parties, or any of them, from and against any claims, damages, litigation, causes of action, and expenses, including reasonable attorneys’ fees, resulting from any breach by Plaintiff of this warranty and representation, or any breach by Plaintiff of his release of Plaintiff’s Released Claims.
- 13.5 Prohibition on Subsequent Assertion of Released Claims. Plaintiff, to the fullest extent allowed by law, is prohibited from asserting a Plaintiff’s Released Claim, and from commencing, joining in, or

voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on Plaintiff's Released Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process. Settlement Class Members, to the fullest extent allowed by law, are prohibited from asserting a Released Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on Released Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process. The State of California and PAGA Members, to the fullest extent allowed by law, are prohibited from asserting a Released Claim, and from commencing, joining in, or voluntarily assisting in a lawsuit or adversary proceeding against the Released Parties, based on the Released PAGA Claims. Excluded from this prohibition are any instances where any individual is legally compelled to testify through service of a subpoena or other process.

14. **Class Settlement Notice and Claims Administration.**

14.1 Engagement of Settlement Administrator. The Parties agree to Phoenix Settlement Administrator as the Settlement Administrator to perform the notice and other settlement claims administration functions set forth below.

14.1.1 The Settlement Administrator shall provide Defendants' counsel and Class Counsel with weekly summary reports, including the total number of Class Settlement Notices that were returned as undeliverable, the total number of objections and requests to opt out of the settlement, and the amounts not claimed by Class Members as a result of the submission of timely and valid requests to opt out of the settlement, if any, and/or any uncashed or undeliverable Settlement Checks. The Settlement Administrator shall maintain records of its work, which shall be available for inspection upon request by Defendants' counsel or Class Counsel.

14.1.2 The Administrator will promptly review on a rolling basis opt-out requests to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting opt-out requests, the Settlement Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid opt-out requests ("Exclusion List"); (b) the names and other identifying

information of Class Members who have submitted invalid opt-out requests; (c) copies of all opt-out requests from Settlement submitted (whether valid or invalid).

14.1.3 Not later than 14 days before the date by which Plaintiff is required to file his Motion for Final Approval, the Settlement Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of opt-out requests from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Settlement Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

14.1.4 Within 10 days after the Settlement Administrator disburses all funds in the GSA, the Settlement Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Settlement Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

## 14.2 Identification of Class Members.

14.2.1 Within 20 calendar days of the entry of the Preliminary Approval Order, Defendants shall provide the Settlement Administrator with the following "Class Data" or "Class List", to the extent that it possesses the information.

- (1) the names, last known addresses, and last known telephone numbers of each Class Member;
- (2) hire dates, termination dates (as applicable), and re-hire dates (as applicable) for each Class Member;

- (3) the number of workweeks worked by each Class Member during the Class Period; and
- (4) the number of pay periods worked by each PAGA Member during the PAGA Period.
- (5) To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Settlement Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Settlement Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

14.2.2 Upon its receipt of the Class Data, the Settlement Administrator shall access the National Change of Address ("NCOA") Database, and update the addresses.

14.2.3 No later than 3 business days after receipt of the Class Data, the Settlement Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, workweeks, and pay periods in the Class Data.

14.2.4 The Settlement Administrator shall provide the Notice Packet by first class mail, forwarding requested, to the Class Members at the addresses identified through the process described above. This mailing shall occur no later than fourteen calendar days after the entry of the Preliminary Approval Order. The first page of the Class Notice shall estimate the dollar amounts of any Class Member Payment and/or PAGA Member Payment payable to the Settlement Class Member, and the number of workweeks and pay periods (if applicable) used to calculate these amounts.

- 14.2.5 As to any Notice Packets that are returned as undeliverable within 5 (five) calendar days after the date of the initial mailing or where the NCOA Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable, the Settlement Administrator shall perform one-skip trace procedure. Such skip-trace procedure shall be performed within two business days of the date on which the Settlement Administrator is informed that a Notice Packet is undeliverable. If this procedure reveals a new address, the Settlement Administrator shall within five business days thereafter re-mail the Notice Packet to the new address.
- 14.2.6 If Defendants and the Settlement Administrator determine, based upon further review of available data, that a person previously identified as being a Class Member or PAGA Member should not be so included or identify a person who should have been included as a Class Member or a PAGA Member but was not so included, Defendants and the Settlement Administrator shall promptly delete or add such person as appropriate and immediately notify Class Counsel prior to such deletions or additions (and the reasons therefore).
- 14.2.7 If the Settlement Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Settlement Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
- 14.2.8 Other than the obligations set forth in this Settlement Agreement, Defendants shall have no additional obligation to identify or locate any Class Member or PAGA Member or have any liability in connection with the provision of information to the Settlement Administrator or otherwise.

### 14.3 Class Settlement Notice and Notification of Shifts.

14.3.1 Class Settlement Notice for Persons Identified as Class Members. The Class Settlement Notice shall be a pre-printed notice, in substantially the form attached hereto as **Exhibit A** and to be approved by the Court. In addition to other information contained on the Class Settlement Notice, the Class Settlement Notice shall state: (1) the number of workweeks that the Class Member worked in California during the Class Period; (2) and the number of pay periods that the PAGA Member worked in California during the PAGA Period. The workweeks and pay periods shall be determined according to Defendants' records. The Class Settlement Notice also shall include an estimate of the Class Member's individual Class Member Payment and an explanation of the pro rata distribution formula.

14.3.1.1 A Class Member may challenge the workweeks or pay periods by communicating with the Settlement Administrator via fax, email or mail. The Settlement Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Settlement Administrator is entitled to presume that the workweeks or pay periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Parties are entitled to respond to a Class Member's challenge and submit documentation or information supporting their view of the workweeks or pay periods worked by the Class Member. The Settlement Administrator's determination of each Class Member's allocation of workweeks or pay periods shall be final and not appealable or otherwise susceptible to challenge. The Settlement Administrator shall promptly provide copies of all challenges to calculation of workweeks and/or pay periods to Defense Counsel and Class Counsel and the Settlement Administrator's determination of the challenges.

### 15. **Objections to the Settlement.**

Any Class Member who does not submit a valid and timely request to opt out of the settlement (i.e., a Settlement Class Member) may object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection, by fax, email, or mail to the Settlement Administrator no later

than the Response Deadline. The objection must include the case name and number and must set forth, in clear and concise terms, a statement of the reasons why the objector believes that the Court should find that the Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved, including the legal and factual arguments supporting the objection. The Settlement Administrator will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense Counsel. Settlement Class Members shall be entitled to appear and/or object at the Final Approval Hearing regardless of whether they have submitted a timely written objection and notice of intention to appear pursuant to this Section. Settlement Class Members may appear at the Final Approval Hearing, either in person or through a lawyer retained at their own expense.

**16. Right to Opt Out.**

16.1 Class Members who do not timely opt out of the Settlement will be deemed to participate in the Settlement and shall become a Settlement Class Member without having to submit a claim form or take any other action. In order to opt out of the Settlement, the Class Member must timely submit by fax, email, or mail, an opt-request request to the Settlement Administrator by the Response Deadline. The opt-out request should state the Class Member's name, address, telephone number, and signature. However, the Settlement Administrator may not reject an opt-out request as invalid because it fails to contain all the information specified in the Class Notice. The Settlement Administrator shall accept any opt-out request as valid if the Settlement Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Settlement Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Settlement Administrator has reason to question the authenticity of an opt-out request, the Settlement Administrator may demand additional proof of the Class Member's identity. The Settlement Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

16.2 Any opt-out request that is not postmarked by the Response Deadline will be invalid. In the event that, prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Member(s), and a second Class Notice will be sent to any new or different address obtained. Such Class Member(s) shall have an additional 14 days in which to opt out. Class Members who opt out of the Settlement pursuant to the terms of this Agreement shall not be permitted to object to the Settlement or appeal and shall not receive any Class Member Payment from the

Net Settlement Amount. Class Members who opt out also shall not be bound by the Class Release provisions in this Agreement or the Final Approval Order. However, PAGA Members cannot opt out of the Release by PAGA Members, and will be bound by that release, regardless of whether they opt out of the Release By Settlement Class Members. Each Class Member who does not opt out of the Settlement shall remain qualified to receive a Class Member Payment and shall be subject to being bound by the applicable Released Class Claims provisions in this Agreement or the Final Approval Order, regardless of whether the Class Member actually receives the Class Notice or objects to the Settlement.

- 16.3 Except for persons who elect to opt out of the Class in the manner and within the time limits specified above and in the Class Settlement Notice, all Class Members shall be deemed to be within the Class for all purposes under this Settlement Agreement, shall be bound by the terms and conditions of this Settlement Agreement (including the release provisions in Paragraph 13), including all orders issued pursuant thereto, and shall be deemed to have waived all unstated objections and unstated opposition to the fairness, reasonableness, and adequacy of this Settlement Agreement, and any of its terms. PAGA Members do not have the right to opt out of the portion of the Agreement that applies to the PAGA Member Payment or the Released PAGA Claims.
- 16.4 If the Settlement Agreement is given final approval, the Effective Date occurs, and Defendants have fully funded the GSA as well as employer taxes, it shall operate as a full, complete, and final release of all Plaintiffs' Released Claims, and all Released Class Claims and Released PAGA Claims and as an effective covenant not to sue.

**17. Payment of Settlement Proceeds.**

- 17.1 Payments to the Settlement Class Members. Class Member Payments to Settlement Class Members shall occur no later than 30 calendar days after the Effective Date. However, the deadlines for the provision of Class Member Payments to particular Settlement Class Members may be extended to provide for the resolution of any disputes regarding the validity or amount of any claims.

**18. Application for Preliminary Approval Order.**

After the Parties' execution of this Agreement, Plaintiffs shall file for preliminary approval of the proposed Settlement, requesting a Preliminary Approval Order that contains the following provisions:

- (1) preliminarily approving the Settlement Agreement and its terms;



- (2) approving the form of the Class Settlement Notice, and finding that the proposed method of disseminating the Class Settlement Notice meets the requirements of due process and is the best notice practicable under the circumstances;
- (3) establishing the procedures and the deadline by which Class Members may assert objections to the Settlement or opt out of the Settlement;
- (4) establishing a deadline to submit papers/briefing in response to any objections and for Plaintiffs to submit papers/briefing in support of final approval of the Settlement Agreement including the Service Awards for the Class Representatives and the Class Counsel Fees and Costs Award;
- (5) appointing Class Counsel, the Settlement Administrator, and the Class Representatives; and
- (6) setting a date for the Fairness Hearing.

Counsel for Defendants will be given an opportunity to comment on said motion prior to filing, and such comments shall be implemented to the extent they are deemed reasonable by Plaintiffs and Class Counsel.

**19. Final Approval Order and Judgment.**

If the Settlement shall be finally approved by the Court following the Fairness Hearing, the Parties hereto shall jointly request that the Court enter a Final Approval Order and Judgment, which includes the following provisions:

- (1) confirming certification of the Settlement Class for settlement purposes;
- (2) finding that the dissemination of the Class Notice, in the form and manner ordered by the Court was accomplished as directed, and met the requirements of due process;
- (3) finally approving the Settlement Agreement and the Settlement as fair, reasonable and adequate and directing consummation of the Settlement in accordance with its terms and provisions, including the terms of the Settlement Agreement that pertain to the PAGA Amount and the Released PAGA Claims;

The Judgment shall include the following provisions:

- (1) directing the Parties to implement the terms of the Settlement Agreement;

- (2) releasing and discharging the Released Parties from any and all liability with respect to the Plaintiffs' Released Claims as hereinabove provided, except for full payment of the Gross Settlement Amount;
- (3) releasing and discharging the Released Parties from any and all liability with respect to the Released Class Claims and Released PAGA Claims as hereinabove provided, except for full payment of the Gross Settlement Amount;
- (4) resolving and settling all of Plaintiff's Released Claims as hereinabove provided, with the release precluding him from instituting, commencing, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of themselves, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Plaintiff's Released Claims under the terms of the Settlement;
- (5) resolving and settling all the Released Class Claims by all Settlement Class Members as hereinabove provided, with the release precluding them from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are Released Class Claims under the terms of the Settlement; and providing that any person who violates the terms of the release by further asserting any of the Released Class Claims against any of the Released Parties shall pay the costs and attorneys' fees incurred by any Released Party as a result of the violation if Defendants have provided written notification to that person or their designated representative of the bar against asserting any of the Released Class Claims and the Released Party is the prevailing party in an action brought by the person for the asserted barred Released Class Claims;
- (6) resolving and settling all the Released PAGA Claims by the State of California and all PAGA Members as hereinabove provided, with the release precluding them from instituting, commencing, or continuing to prosecute, directly or indirectly, as an individual or collectively, representatively, derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever, any action in this Court, any other state court, or any arbitration or mediation proceeding or any other similar proceeding, against any Released Party that asserts any claims that are

Released PAGA Claims under the terms of the Settlement; and providing that any person who violates the terms of the release by further asserting any of the Released PAGA Claims against any of the Released Parties shall pay the costs and attorneys' fees incurred by any Released Party as a result of the violation if Defendants have provided written notification to that person or their designated representative of the bar against asserting any of the Released PAGA Claims and the Released Party is the prevailing party in an action brought by the person for the asserted barred Released PAGA Claims;

(7) awarding the Service Awards to the Class Representative, Class Counsel Fees and Costs Award to Class Counsel, and Settlement Administration Costs to the Settlement Administrator, as determined by the Court;

(8) approving the PAGA Member Payment and the Released PAGA Claims; and

(9) reserving continuing and exclusive jurisdiction over all matters related to the administration and consummation of the terms of this Settlement and enforcement of the Judgment.

**20. Effect of Settlement Not Being Final.**

In the event that the Settlement does not become Final then the Settlement Agreement shall become null and void, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto, and all Parties and their respective predecessors and successors shall be deemed to have reverted to their respective positions in the Action as of the date and time immediately prior to the execution of this Settlement Agreement, and shall retain all rights to make all arguments regarding the merits of the claims and the appropriateness of the case for class and/or representative action treatment. If the Court does not approve either preliminarily or finally any material term or condition of the Settlement Agreement, or if the Court effects a material change to the Settlement, then this entire Settlement Agreement will be, at the Parties' discretion, voidable and unenforceable. Notwithstanding the foregoing, the Parties shall meet and confer to address any concerns the Court may have regarding the Settlement, including revisions to this Agreement as requested by the Court and agreed by the Parties, additional briefing, and additional declarations, among other things.

**21. Tolerance of Requests to Opt Out.**

Notwithstanding any other provision of this Settlement Agreement, Defendants shall retain the right, in the exercise of their sole discretion, to nullify the Settlement within 15 calendar days after expiration of the Opt Out Deadline, if

more than 10% of Class Members choose to validly and timely request to opt out of this Settlement. The Parties agree that, if any of Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Settlement Agreement; provided, however, the withdrawing Defendant will remain responsible for paying all Settlement Administration Costs incurred through the date of nullification. Defendants shall notify Class Counsel of their decision to nullify no later than 25 calendar days after expiration of the Opt Out Deadline.

**22. No Admissions.**

The Parties understand and agree that this Settlement Agreement is the result of a good faith compromise settlement of disputed claims, and no part of this Settlement Agreement or any conduct or written or oral statements made in connection with this Settlement and this Settlement Agreement, whether or not the Settlement is finally approved and/or consummated, may be offered as or construed to be an admission or concession of any kind by Defendants, or any of the Class Members, Released Parties, or Plaintiff. This Settlement and this Settlement Agreement shall not constitute an admission on behalf of Defendants of any form of liability or the accuracy of any allegation made by Plaintiffs or Class Counsel.

**23. Waiver of Right to Appeal.**

Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees and Costs Award reflected set forth in this Settlement, the Parties, their respective counsel, and all Settlement Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final.

**24. Amended Judgment.**

If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

**25. Avoidance of Undue Publicity.**

The Parties and their counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about the fact, amount or terms of the settlement. If counsel for any party receives an inquiry about the Settlement from the media, counsel may respond only after the motion for preliminary approval has been filed

and only by confirming the accurate terms of the Settlement. Class Counsel agrees not to identify Defendants in any way in any website, blog, article, or social media. Nothing in this provision shall prevent Defendants from making any required disclosure or Class Counsel from referencing the Settlement in adequacy filings. Neither Plaintiff nor Class Counsel will publicize the Settlement in any way, except that nothing in this Settlement Agreement shall preclude Class Counsel from communicating with members of the Settlement Class about the Agreement or in submitting filings with the Court or the LWDA in furtherance of obtaining approval of the Settlement. Nor shall anything herein restrict Class Counsel from including publicly available information regarding this Settlement in future judicial submissions regarding Class Counsel's qualifications and experience or otherwise allowing the Judgment to become known to Class Members. Moreover, nothing herein shall restrict Class Counsel from communicating with Class Members who contact Class Counsel after receiving notice of this Settlement.

**26. Extensions of Time.**

Without further order of the Court, the Parties hereto may agree in writing to reasonable extensions of time to carry out any of the provisions of the Settlement.

**27. Construction.**

This Settlement Agreement was entered into after substantial good faith, arms-length negotiations between the Parties' counsel. This Settlement Agreement has been entered into without any coercion and under no duress. The Parties acknowledge and agree that all Parties had an equal hand in drafting this Settlement Agreement so that it shall not be deemed to have been prepared or drafted by one party or another.

**28. Good Faith.**

The Parties to this Settlement Agreement agree that it reflects their good faith compromise of the claims raised in the Action, or those that could have been raised in the Action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel. The Parties to this Settlement Agreement pledge their good faith and fair dealing in supporting the approval of this Settlement by the Court, are represented by competent counsel, and have had an opportunity to consult with counsel prior to execution of this Settlement Agreement.

**29. Due Authority of Attorneys.**

Each of the attorneys executing this Settlement Agreement on behalf of one or more Parties hereto warrants and represents that he or she has been duly authorized and empowered to execute this Settlement Agreement on behalf of each such respective Party and to bind them to the terms hereof.

**30. Entire Agreement.**

This Settlement Agreement (including all Exhibits hereto) sets forth the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Settlement Agreement, whether oral or written, regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, warranties, promises, or statements relating to the subjects covered herein, oral or otherwise, have been made by any of the Parties which are not embodied or incorporated by reference herein.

**31. Modification or Amendment.**

This Settlement Agreement may not be modified or amended except in a writing signed by all signatories hereto or their successors in interest.

**32. Successors.**

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns, and upon any corporation, partnership or other entity into or with which any Party hereto may merge, combine or consolidate.

**33. Counterparts.**

This Settlement Agreement may be executed in counterparts, by facsimile or electronically, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**34. Waivers.**

The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

**35. Governing Law.**

This Settlement Agreement shall be governed by and construed, enforced, and administered in accordance with the internal laws of the State of California.

**36. Headings.**

The headings contained in this Settlement Agreement are for convenience and reference purposes only, and shall not be given weight in its construction.

**37. Continuing Jurisdiction.**

The Court in which the Parties will seek approval of the Settlement shall retain continuing jurisdiction over the Action to ensure the continuing implementation and enforcement of the provisions of this Settlement Agreement under applicable law, including, but not limited to, California Code of Civil section 664.6.

**38. Enforceability.**

In the event any civil action or litigation instituted to remedy, prevent, or obtain relief from a Material Breach of this Settlement Agreement by a Party, the prevailing Party in such enforcement action will be entitled to attorneys' fees and costs in connection with such enforcement action. Any attorneys' fees and costs awarded against the Class Members and in favor of Defendants shall be paid by Class Counsel.

"Material Breach" as used in this paragraph means a breach of Settlement Agreement terms that prevents the Settlement from being completed, including any failure by Defendants to fund the Settlement. Excluded from the definition of Material Breach is those options and rights available to the Parties in Paragraphs 20 and 21 of the Agreement or any proceedings or requests for relief under the United States Bankruptcy Code.

**39. Notices.**

Any notices, requests, demands, or other communications required or permitted to be given pursuant to this Settlement Agreement, other than notice to the Class or Class Members, shall be in writing and mailed or emailed as follows: (1) to Class Representatives, the Class, and Class Counsel to the attention of David Bibiyan, Bibiyan Law Group, 8484 Wilshire Blvd., Suite 500, Beverly Hills, California, 90211, (310) 438-5555, [david@tomorrowlaw.com](mailto:david@tomorrowlaw.com) and [vedang@tomorrowlaw.com](mailto:vedang@tomorrowlaw.com), or any alternative address provided; (2) to Defendants and counsel for Defendants, to the attention of Christy Granieri, Freeburg & Granieri, APC, 107 S. Fair Oaks Ave., Suite 321, Pasadena, California, 91105, (626) 486-9082, [christy@fgfirm.law](mailto:christy@fgfirm.law), or any alternative address provided; and to the attention of Andrew M. Paley, Seyfarth Shaw LLP, 2029 Century Park East, Suite 3500, Los Angeles, California 90067-3021, (310) 277-7200, [apaley@seyfarth.com](mailto:apaley@seyfarth.com) or any alternative address provided.


IN WITNESS WHEREOF, this Settlement Agreement has been duly executed by and on behalf of the Parties, as follows:

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Dated: May 30, 2023

By:   
Roque Garzón (May 30, 2023 14:08 PDT)

Roque Garzon  
On behalf of himself, as Plaintiff, and the  
Class, and as a private attorney general on  
behalf of the State of California

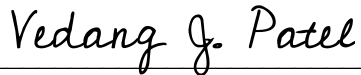
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mobile Hi-Tech Wheels, Inc.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Wheel Pros, LLC

Dated: 6/2/23

By:   
\_\_\_\_\_  
David Bibiyan  
Vedang J. Patel

Counsel for Plaintiff Roque Garzon

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Christy Granieri  
Counsel for Defendants Mobile Hi-Tech  
Wheels, Inc., and Wheel Pros, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Andrew Paley  
Counsel for Defendants Mobile Hi-Tech  
Wheels, Inc., and Wheel Pros, LLC



Dated: \_\_\_\_\_

By: \_\_\_\_\_

Roque Garzon  
On behalf of himself, as Plaintiff, and the  
Class, and as a private attorney general on  
behalf of the State of California

Dated: May 26, 2023

By: *Edward Burns*  
Edward Burns (May 26, 2023 10:46 MDT)

Mobile Hi-Tech Wheels, Inc.

Dated: May 26, 2023

By: *Edward Burns*  
Edward Burns (May 26, 2023 10:46 MDT)

Wheel Pros, LLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

David Bibiyan  
Vedang J. Patel

Counsel for Plaintiff Roque Garzon

Dated: 5/26/2023

By: *Christy Granieri*

Christy Granieri  
Counsel for Defendants Mobile Hi-Tech  
Wheels, Inc., and Wheel Pros, LLC

Dated: May 26, 2023

By: *Andrew Paley*  
Andrew Paley (May 26, 2023 11:26 PDT)

Andrew Paley  
Counsel for Defendants Mobile Hi-Tech  
Wheels, Inc., and Wheel Pros, LLC

EXHIBIT A

**NOTICE OF SETTLEMENT OF CLASS ACTION AND FINAL APPROVAL HEARING**

**Rogue Garzon v. Mobile Hi-Tech Wheels, LLC, et al.**  
Superior Court of the State California, County of Los Angeles  
Case No. 21STCV15396

*The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

**To: All individuals all current and former non-exempt employees of either Mobile Hi-Tech Wheels, Inc. or Wheel Pros, LLC in the State of California including all temporary employees supplied to either Defendant by any staffing agency at any time between April 22, 2017 through [date of preliminary approval of the settlement] ("Class Period") (the "Class"):**

**THIS NOTICE is of a proposed Settlement of a class action lawsuit, and an announcement of a court hearing regarding the fairness of the Settlement that you may choose to attend. Your rights may be affected by the legal proceedings in this action. The Court will conduct a hearing on INSERT DATE to address whether the proposed Settlement should be approved ("Final Approval Hearing"). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.**

**[Name of Class Member],**

You have been identified as a Class Member in the above lawsuit. Under the terms of the proposed Settlement you are estimated to receive approximately \$INSERT AMOUNT as your share of the Settlement should the Court grant the Settlement in full. Please note that this is only an estimate. Your actual share of the Settlement may be more or less than this estimate. The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants (defined below) to fund individual Class Member Payment, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Member Payment and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on Defendants' records, and the Parties' current assumptions, **your Individual Class Member Payment is estimated to be \$INSERT AMOUNT and your Individual PAGA Member Payment is estimated to be \$INSERT AMOUNT** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Member Payment, then according to Defendants' records you are not eligible for an Individual PAGA Member Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on Defendants' records that: (1) you worked approximately [number of workweeks] workweeks between April 22, 2017 through [redacted] in the State of California; and (2) you worked approximately [number of pay periods] pay periods between April 1, 2020 through [redacted] in the State of California. If you dispute the total number of workweeks or pay periods set forth above, you must set forth the information that you believe is correct to Phoenix Settlement Administrators not later than INSERT DEADLINE. You need to support your challenge by sending copies of pay stubs or other records. The Settlement Administrator will accept Defendants' calculation of workweeks and/or pay periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve number of workweeks and pay periods challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Settlement Class Members) and Defendants' Counsel. The Settlement Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

Your eligibility requirements for receiving payments are described below.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT (SEE SECTION VIII FOR MORE DETAILS)</b>	
<b>You Don't Have to Do Anything to Participate in the Settlement</b>	Receive a settlement payment and give up your right to sue on the Released Claims described in Section IV. This Settlement does not require a claims process to receive a payment. Therefore, there is <u>no</u> claim form for you to complete should you wish to receive payment.
<b>You Can Opt-out of the Class Settlement but not the PAGA Settlement</b>  <b>The Opt-out Deadline is INSERT DEADLINE.</b>	You may “opt out” of this Settlement, including any right to a settlement payment, except that, as discussed in more detail below, you will receive your share of the PAGA Member Payment, if any, regardless of whether you opt out of the Settlement. You must submit your opt-out notice, as described below, on or before <b>INSERT DEADLINE</b> . All Class Members who validly and timely opt out of the Settlement will not receive any settlement payment and will preserve Released Class Claims described in Section IV subject to applicable statutes of limitations, except as follows: Irrespective of whether a Class Member excludes themselves from the Settlement, if they are a PAGA Member, they shall be deemed to have released their Released PAGA Claims, and they will receive a share of the PAGA Member Payment.
<b>Settlement Class Members Can Object to the Class Settlement but not the PAGA Settlement</b>  <b>Written Objections Must be Submitted by INSERT DEADLINE.</b>	All Class Members who do not opt-out (“Settlement Class Members”) can object to any aspect of the proposed Settlement, except for the PAGA Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Settlement Class Members. You can object to any term of the Settlement if you think it is unreasonable. See Section VIII of this Notice.
<b>You Can Participate in the [INSERT DEADLINE]_ Final Approval Hearing</b>	The Court’s Final Approval Hearing is scheduled to take place on <b>INSERT DEADLINE</b> . You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Settlement Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section VIII of this Notice.

**I. Why should I read this Notice?**

The Parties have proposed to settle this class action lawsuit. You are a member of the Class. If the Court approves the proposed Settlement, your legal rights may be affected. This Notice, which has been approved by the Court, is only a summary. You may receive a copy of the Settlement Agreement, the Judgment or other Settlement documents by going to the Administrator’s website at [REDACTED] or by contacting the Settlement Administrator or Class Counsel. You may also get more details by examining the Court’s file using the court’s website at <https://www.lacourt.org/casesummary/ui/> and entering the Case No. 21STCV15396 or you can also make an appointment to personally review court documents in the Clerk’s Office at the Stanley Mosk Courthouse by calling (213) 830-0800. See Section X for further information.

## II. What is this lawsuit about?

A lawsuit entitled *Roque Garzon v. Mobile Hi-Tech Wheels, LLC, et al.*, is now pending in the Superior Court of the State California, County of Los Angeles, Case No. 21STCV15396. Plaintiff Roque Garzon (“Plaintiff” or “Class Representative”) has alleged claims against Wheel Pros, LLC and Mobile Hi-Tech Wheels, Inc. (collectively, “Defendants”) for wage and hour violations under California law. Plaintiff brought this Action as a class action and Private Attorneys General Act (“PAGA”) enforcement action on behalf of himself and other similarly situated individuals employed by Defendants or individuals placed with Defendants through staffing agencies. Plaintiff asserts causes of action for, among other things: (1) failure to pay all hours worked; (2) failure to pay overtime; (3) failure to pay minimum wage; (4) failure to authorize and permit meal breaks; (5) failure to authorize and permit rest breaks; (6) failure to reimburse for business-related expenditures; (7) failure to furnish wage statements; (8) waiting time penalties; (9) unfair business practices; (10) penalties under Labor Code section 210; and (11) Violation of California Labor Code § 2699 *et seq.* (i.e., PAGA). Plaintiff seeks monetary recovery on behalf of the Class and PAGA Members for the alleged violations, along with interest, costs and fees.

*Defendants contend that they have complied with all laws and deny the allegations Plaintiff is asserting in this Action. The Court has not formed any opinions concerning the merits of the Lawsuit, and the Court has not ruled for or against Plaintiff as to the merits of any of his individual or class or PAGA enforcement claims. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable and that any final determination of those issues will be made at the Final Approval Hearing. **You will not be retaliated against for electing to participate or not participate in the Settlement.***

So far, the Court has made no determination whether Defendants or Plaintiff are correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written Settlement Agreement and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void. Defendants will not pay any money and Class Members will not release any claims against Defendants.

## III. Who is covered by the class action lawsuit and the proposed Settlement?

**A. The Class.** On **INSERT DATE**, the Court granted preliminary approval of the Settlement and authorized this notice. The Court defined the “Class Members” as all current and former non-exempt employees of either Defendant in the State of California including all temporary employees supplied to either Defendant by any staffing agency at any time between April 22, 2017 through **[date of preliminary approval of the settlement]** (“Class Period”). The Court also defined “PAGA Members” as all current and former non-exempt employees of either Defendant in the State of California including all temporary employees supplied to either Defendant by any staffing agency at any time between April 1, 2020 through the end of the Class Period (the “PAGA Period”)

**B. The Effect of Membership in the Class.** If you are a Class Member, unless you exclude yourself from (“opt out of”) the Settlement by following the procedures for exclusion that are set forth in this Notice you will be considered a Settlement Class Member. Settlement Class Members are eligible to receive the benefits created by the proposed Settlement including a settlement payment based on their pro-rata share of the Net Settlement Amount

and will be bound by the Settlement if it is approved by the Court. Persons who exclude themselves from the Class will not be bound by the Settlement and will not share in the Settlement proceeds but may pursue their own timely individual claims against Defendants subject to applicable statute of limitations, except as follows: Irrespective of whether a Class Member excludes themselves from the Settlement, if they are a PAGA Member, they shall be deemed to have released their Released PAGA Claims, and they will receive a share of the PAGA Member Payment.

#### **IV. What are the terms of the Settlement?**

The proposed Settlement was negotiated with Defendants by Plaintiffs and the attorneys for the Class ("Class Counsel"). Plaintiffs and Class Counsel believe that this Settlement is in the best interest of the members of the Settlement Class. As part of the proposed Settlement, the Parties have agreed to the following:

#### **Monetary Amounts Under the Settlement**

- Defendants shall provide, on a non-claims-made basis, monetary compensation in the maximum total amount of \$2,150,000 (the "Gross Settlement Amount" or "GSA"), less amounts awarded by the Court for Class Counsel Fees and Costs Award (i.e., attorneys' fees and costs), Settlement Administration Costs, Service Awards to the Class Representatives, and PAGA Amount for penalties under the PAGA (the "Net Settlement Amount" or "NSA"). Assuming the Court approves the maximum amounts sought to be deducted from the GSA, the NSA is estimated to be \$ \_\_\_\_\_, and the PAGA Member Payment will be \$25,000.
- The Settlement Administrator will calculate individual Class Members' pro-rata share of the NSA for their individual settlement payment. Each Class Member's proportional share will be determined by dividing the number of weeks worked by the Class Member while working for either Defendant in California during the period of April 22, 2017 through \_\_\_\_\_ (the "Class Period") by all weeks worked by all Class Members while working for either Defendant in California during the Class Period, multiplied by the NSA. PAGA Member's pro-rata share of the PAGA Member Payment shall be determined by dividing the number of pay periods worked by the PAGA Member while working for either Defendant during the period of April 1, 2020 through \_\_\_\_\_ (the "PAGA Period") by all pay periods worked by all PAGA Members while working for either Defendant in California during the PAGA Period, multiplied by the PAGA Member Payment.
- The number of workweeks and pay periods that Defendants shows you worked is listed on the first page of this Notice along with your estimated settlement share.
- Defendants, through the Settlement Administrator, shall pay the amounts awarded by the Court within 30 calendar days after the Effective Date of the Settlement Agreement. The Effective Date means the date the Court's order approving the settlement and judgment thereon ("Judgment") becomes final. For purposes of the Settlement Agreement, the Court's Judgment "becomes final" upon the later of: (i) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (i.e., 61 calendar days after notice of entry of the Court's Judgment); (ii) if an appeal is filed, the date affirmance of an appeal of the Judgment becomes final; or (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment.
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- Contemporaneous with requesting the Court approve in final the proposed Settlement, Class Counsel will apply to the Court for approval of all amounts sought in the Settlement as follows: (i) all payments to Settlement Class Members; (ii) Settlement Administration Costs which are estimated to not exceed

\$30,000.00 for services associated with administering the Settlement; (iii) a payment of \$75,000 to the LWDA for settlement of the PAGA claims brought in this Action; (iv) a payment of \$25,000 to the PAGA Members; (v) a \$7,500 Service Award to Plaintiff for his service to the Class and his general release of claims; (vi) and an award of Class Counsel Fees in the amount of thirty-five percent of the total Gross Settlement Amount, which unless increased pursuant to the Settlement, amounts to \$752,500 and Costs Award up to \$40,000.00 for out of pocket costs incurred by Class Counsel in prosecuting this Action.

- One-third of payments to Settlement Class Members will be allocated to settlement of disputed claims for wages, two-thirds of payments to Settlement Class Members will be allocated to settlement of disputed claims for penalties and interest. Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.
- The front of every check issued for Individual Class Member Payments and Individual PAGA Member Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

### **Released Claims**

In exchange for the consideration set forth in this Settlement Agreement, Plaintiffs, the Settlement Class Members, and PAGA Members agree to release those claims set forth herein.

- Settlement Class Members' Release. After the Judgment is final, Settlement Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for claims covered by the Settlement Class Members' Release. If you are a PAGA Member, you will be bound by the PAGA Members' Release regardless of whether you opt out of the Settlement.

The Settlement Class Members will be bound by the following release:

respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, debts, liabilities, demands, obligations, penalties, premium pay, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, and irrespective of theory of recovery, that were or could have been reasonably brought based on the facts or claims alleged in the Operative Complaint, arising during the Class Period, irrespective of recovery. The released claims include, but are not limited to, claims for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock work), failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or properly compensate meal or rest break premiums, failure to reimburse for business-related expenses, failure to furnish accurate wage statements, record keeping violations, failure to pay wages timely during employment, failure to pay final wages upon separation of employment, claims related to pre and post-shift work, failure to properly calculate the regular rate of pay, claims derivative and/or related to these claims, liquidated damages, and conversion of wages.

- PAGA Members' Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement, all PAGA Members will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all PAGA Members, including those who are Settlements Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The PAGA Members' Releases for Participating and Non-Participating Class Members are as follows:

All PAGA Members and the State of California are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged during the PAGA Period, based on the facts stated in the Operative Complaint and the PAGA Notice, irrespective of theory of recovery, including, but not limited to, claims for civil penalties for any alleged failure to pay all wages due (including minimum wage and overtime wages), failure to pay for all hours worked (including off-the clock work), failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve of all duties during meal and rest periods, failure to pay or properly compensate meal or rest break premiums, failure to reimburse for business-related expenses, failure to furnish accurate wage statements, record keeping violations, failure to pay wages timely during employment, failure to pay final wages upon separation of employment, claims related to pre and post-shift work, failure to properly calculate the regular rate of pay, claims derivative and/or related to these claims, liquidated damages, and conversion of wages.

“Released Parties” means: Defendants Wheel Pros, LLC, and Mobile Hi-Tech Wheels, Inc., and each of their predecessors, successors, subsidiaries, parent companies, other corporate affiliates, and assigns, and all of their owners, shareholders, members, officers, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors and assigns, and any other persons acting by, through, under or in concert with any of them.

- **If you do NOT exclude yourself from the Class by following the procedures set forth in this Notice and the Court approves the proposed Settlement, you will be deemed to have entered into the release of Released Claims in the Settlement Agreement. If you are also a PAGA Member, regardless of whether you opt out of the Settlement, you will release the Released PAGA Claims and will receive a share of the PAGA Member Payment.**

#### V. How do I receive a payment?

Any Class Member who wishes to be considered for any payment under this Settlement does not need to do anything. If you do not elect to exclude yourself from the Settlement and are deemed an eligible Class member, you will receive a payment should the Settlement become Final. If you are a member of the Class and you move or change your address, and you want to receive your settlement check at your new address, you must send a notice of your change of address to **INSERT SETTLEMENT ADMINISTRATOR INFORMATION** or contact the Settlement Administrator by phone at **\_\_\_\_\_**.

## VI. Who represents the Class?

The Court has designated Plaintiff Roque Garzon to serve as Class Representative in this lawsuit. The attorneys and law firm that serve as Class Counsel are David Bibiyan of The Bibiyan Law Group. Class Counsel can be reached as follows: 8484 Wilshire Blvd., Suite 500, Beverly Hills, California, 90211, (310) 438-5555, david@tomorrowlaw.com or vedang@tomorrowlaw.com .

## VII. What are the reasons for the Settlement?

Plaintiff and Class Counsel agreed to enter into this proposed Settlement after weighing the risks and benefits to the Class of this Settlement compared with those of continuing the litigation. The factors that Plaintiff and Class Counsel considered included the uncertainty and delay associated with continued litigation, a trial and appeals, and the uncertainty of particular legal issues that have yet to be determined. Plaintiff and Class Counsel balanced these and other substantial risks in determining that the proposed Settlement is fair, reasonable, and adequate in light of all circumstances and in the best interests of Class Members.

Defendants agreed to this proposed Settlement in order to avoid the expense and distraction associated with lengthy litigation.

## VIII. What are my rights and options?

**A. First, you may remain a member of the Class, represented by Class Counsel, and take no further action.** If you take no further action as a Class Member, you will be represented by Class Counsel and will have the right to receive your share of the Settlement proceeds. If the Settlement is approved by the Court, you will be bound by the terms of the Settlement which will result in a release of the Released Class Claims. As a member of the Class, you will not be charged for the services of Class Counsel.

**B. Second, you may exclude yourself from the Class.** If you are a member of the Class but do not want to remain in the Class, you may exclude yourself (“opt out”). If you exclude yourself from the Class, you will lose any right to participate in the Settlement including any right to receive a settlement payment, except that if you are a PAGA Member you will release your Released PAGA Claims regardless of whether you opt out of the Settlement and will receive a share of the PAGA Member Payment. You will also lose the right to have objections you might have to the Settlement considered by the Court before it rules on the Settlement. You will be free to pursue any claims you may have against Defendants on your own behalf subject to applicable statute of limitations, but Class Counsel will not represent you. If you **do not** wish to take part in the Settlement, you may exclude yourself (i.e., opt-out) by sending to the Settlement Administrator a letter/card postmarked no later than **[INSERT DATE]**, with your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement.

Send the Request for Exclusion directly to the Settlement Administrator at the following address **by no later than [Insert opt-out date], or it will be invalid.**

**[Insert ADDRESS]**

If you want confirmation of receipt of your opt-out letter, please send it by U.S. certified mail, return receipt requested and/or contact the Settlement Administrator.



**If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Class, and your rights will be determined in this Action by the Settlement Agreement if it is approved by the Court and you may not recover under any other individual settlement agreement regarding the claims released through the Released Class Claims.**

**C. Third, you may remain a member of the Class, and on your own behalf, or through your own attorney, object to the certification of the Class, to the Settlement, to the application for Class Counsel Fees and Costs Award, and/or to the application for Service Awards.** Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least 16 days before the **[INSERT DATE]** Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Class Counsel Fees and Costs Award, and Service Awards stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Service Awards. You can also view them on the Court's Website at <https://www.lacourt.org/casesummary/ui/>.

If the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the proposed Settlement, or any portion of it, you must file with the Settlement Administrator a written objection stating your name, current address, telephone number, dates you worked for either Defendant, the case name and number, each specific reason in support of your objection, and any legal support for each objection. Objections must be in writing, signed and mailed to the Settlement Administrator, **[Insert ADDRESS]**, **by no later than [Insert deadline]**. However, the Court will listen to Class Members (or their attorneys) who ask to speak regarding their objections at the Final Approval Hearing, regardless of whether they have made a timely written objection. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as Class Members who do not object. Any member of the Settlement Class who does not object in the manner provided above shall have waived any objection to the Settlement, whether by appeal or otherwise.

#### **IX. When is the court hearing and what is it for?**

On **[INSERT FINAL APPROVAL HEARING DATE]**, the Court will hold a public hearing in Department 12 of the Superior Court for the State of California, County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for Class Counsel Fees and Costs Award, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for a Service Award. This hearing may be continued or rescheduled by the Court without further notice. You should check the Settlement Administrator's website beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement may attend the Final Approval Hearing, but are not required to do so. The Court will listen to Class Members who ask to speak regarding their objections at the Final Approval Hearing, regardless of whether they have made a timely objection.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend to listen to the proceedings or to object to the Settlement. You may remotely appear at the Final Approval Hearing by using the Court Connect procedure at <https://www.lacourt.org/lacc/>. You may also attend the Final Approval Hearing in person, but under the Los Angeles County Superior Court's June 28, 2021 General Order, you must adhere to the following rules when accessing the courthouse:

- All persons, regardless of vaccination status, must wear a face mask over both the nose and mouth while in public areas of the courthouse, including courtrooms. Children under the age of two (2) are exempt from the Order. Court employees must wear face masks that meet the Cal/OSHA requirements.
- Individuals with a physical or mental health impairment or disability who seek an exemption from the face mask requirement must contact the ADA liaison at the courthouse prior to their appearance to request a reasonable accommodation pursuant to the Americans with Disabilities Act or Rule 1.100 of the California Rules of Court. A list of ADA liaisons is available at [www.lacourt.org/ada/adahome.aspx](http://www.lacourt.org/ada/adahome.aspx).
- Individuals who decline or refuse to wear a face mask without a court order exempting them from the mask requirement will be denied entry to the courthouse and/or courtroom.
- Individuals who remove their face masks after entering the courthouse or courtroom will be reminded to wear them. If they refuse, they may be denied services, may have their legal matters rescheduled, and/or will be asked to leave the courthouse or courtroom immediately. Persons who refuse to leave voluntarily will be escorted out of the courthouse and/or courtroom by Los Angeles County Sheriff's Department personnel.
- While snack bars and cafeterias are open, eating or drinking is prohibited in courthouse hallways.

Moreover, under the Los Angeles Superior Court's July 30, 2021 News Release, "anyone experiencing symptoms, who has been exposed to COVID-19, or tested positive for SARS-CoV-2, should not enter any courthouses. If you have tested positive or are experiencing symptoms, promptly call the courtroom and other parties to continue the hearing or trial."

Due to the evolving nature of the pandemic, you should check for the latest updates on accessing the courthouse by viewing the Court's website at <https://www.lacourt.org/newsmedia/notices/newsrelease>.

### **X. Where can I get more information?**

If you have questions about this Notice, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Settlement Administrator (contact information listed in Section V), for more information or to request that a copy of this Notice be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them – contact information noted above in Section VI. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice, which has been approved by the Court, is only a summary. You may receive a copy of the Settlement Agreement, the Final Judgment or other Settlement documents by going to the Administrator's website at [\[redacted\]](#) or by contacting the Settlement Administrator or Class Counsel. You may also get more details by examining the Court's file using the court's website at <https://www.lacourt.org/casesummary/ui/> and entering the Case No. 21STCV15396. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

### **XI. What If I Lose My Settlement Check?**

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check, and the check has not already been cashed. If your check is already void you should consult the Unclaimed Property Fund at (800) 992-4647 for instructions on how to retrieve the funds.

## **XII. What If I Change My Address?**

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR DEFENDANTS FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS ACTION**