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8 and all others similarly situated and aggrieved

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

12 ROQUE GARZON, an individual, on behalf
of himself and all others similarly situated and
13 aggrieved,

14 Plaintiff,

15 v.

16 MOBILE HI-TECH WHEELS, LLC, a
Delaware limited liability company; MOBILE
17 HI-TECH WHEELS, LLC, a California
limited liability company; WHEEL PROS,
18 INC., a Delaware corporation; WHEEL PROS,
LLC, a Delaware limited liability company;
19 WHEEL PROS HOLDINGS, LLC, a
Delaware limited liability company; WHEEL
20 PROS HOLDINGS, LP, a Delaware limited
partnership; WHEEL PROS
21 INTERMEDIATE, INC., a Delaware
corporation; WHEEL PROS
22 INTERMEDIATE HOLDINGS, INC., a
Delaware corporation; ACS STAFFING,
23 INC., a California corporation; CLEARLAKE
CAPITAL GROUP, L.P., a Delaware limited
24 partnership; JODY GROCE, MOBILE HI-
TECH WHEELS, INC., a California
25 corporation; an individual; RANDY WHITE,
an individual; and DOES 1 through 100,
26 inclusive; and DOES 1 through 100, inclusive,

27 Defendants.
28

FILED
Superior Court of California
County of Los Angeles
06/08/2023

David W. Slayton, Executive Officer / Clerk of Court

By: L. MGreené Deputy

CASE NO.: 21STCV15396

[Assigned for all purposes to the Hon. Carolyn
B. Kuhl in Dept. 12]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND CERTIFYING
CLASS FOR SETTLEMENT PURPOSES
ONLY**

1 This Court, having considered the Motion of plaintiff ROQUE GARZON (“Plaintiff”) for
2 Preliminary Approval of the Class and Representative Action Settlement and Provisional Class
3 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations
4 of David D. Bibiyan, Vedang J. Patel, Plaintiff, and Jodey Lawrence, the Joint Stipulation re: Class
5 Action and Representative Action Settlement (the “Settlement Agreement”), the Notice of Proposed
6 Class Action Settlement and Date for Final Approval Hearing (“Class Notice”), and other
7 documents submitted in support of the Motion for Preliminary Approval, hereby **ORDERS,**
8 **ADJUDGES AND DECREES THAT:**

9 1. The definitions set out in the Settlement Agreement are incorporated by reference
10 into this Order; all terms defined therein shall have the same meaning in this Order.

11 2. The Court certifies the following settlement class (“Class” or “Class Members”) for
12 the purpose of settlement only: all current and former non-exempt employees of either defendant
13 Mobile Hi-Tech Wheels, Inc. (“MHT”), or defendant Wheel Pros, LLC (“Wheel Pros,” collectively
14 with MHT, Defendants), in the State of California, including all temporary employees supplied to
15 either Defendants by any staffing agency at any time between April 22, 2017 through the date of
16 preliminary approval of the settlement (“Class Period”).

17 3. The Court preliminarily appoints named plaintiff Roque Garzon as Class
18 Representative, and David D. Bibiyan of Bibiyan Law Group, P.C., as Class Counsel.

19 4. The Court preliminarily approves the proposed class settlement upon the terms and
20 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
21 settlement appears to be within the range of reasonableness of settlement that could ultimately be
22 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
23 amount is fair, adequate and reasonable as to all potential class members when balanced against the
24 probable outcome of further litigation relating to liability and damages issues. It further appears that
25 extensive and costly investigation and research has been conducted such that counsel for the parties
26 at this time are reasonably able to evaluate their respective positions. It further appears to the Court
27 that the settlement at this time will avoid substantial additional costs to all parties, as well as the
28 delay and risks that would be presented by the further prosecution of the Action. It further appears

1 that the settlement has been reached as the result of intensive, non-collusive and arms-length
2 negotiations utilizing an experienced third-party neutral.

3 5. The Court approves, as to form and content, the Class Notice that has been submitted
4 herewith.

5 6. The Court directs the mailing of the Class Notice by first-class mail to the Class
6 Members in accordance with the procedures set forth in the Settlement Agreement. The Court finds
7 that dissemination of the Class Notice set forth in the Settlement Agreement complies with the
8 requirements of law and appears to be the best notice practicable under the circumstances.

9 7. The Court hereby preliminarily approves the definition and disposition of the Gross
10 Settlement Amount of \$2,150,000.00, which is inclusive of: attorneys' fees of up to thirty-five
11 percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the Settlement
12 Agreement, amounts to \$752,500.00, in addition to actual costs incurred of up to \$40,000.00;
13 enhancement award of up to \$7,500.00 to Plaintiff; costs of settlement administration of no more
14 than \$30,000.00; and Private Attorneys' General Act of 2004 ("PAGA") penalties in the amount of
15 \$100,000.00, of which \$75,000.00 (75%) will be paid to the Labor and Workforce Development
16 Agency ("LWDA") and \$25,000.00 (25%) to "PAGA Members," defined as Class Members
17 working for Defendants during the period from April 1, 2020 through the end of the Class Period
18 ("PAGA Period").

19 8. The Gross Settlement Amount expressly excludes Employer Taxes, which will be
20 paid separately and apart by Defendants on the wages portion of the Gross Settlement Amount.

21 9. Class Member's "Workweek" shall mean the number of weeks that a Settlement
22 Class Member was employed by and worked for the Defendants in a non-exempt, hourly-paid
23 position during the Class Period in California, based on hire dates, re-hire dates (as applicable), and
24 termination dates (as applicable).

25 10. The Settlement is based on Defendants' estimation that there are no more than 77,881
26 Workweeks from April 22, 2017 through August 31, 2022 worked by Class Members. If, as of the
27 close of the Class Period, the actual number of Workweeks worked by Class Members during the
28 Class Period is more than 110% of 77,881 workweeks – i.e., if there are 85,699 or more Workweeks

1 worked by Class Members during the Class Period – then either the Gross Settlement Amount will
2 be increased by the same proportion above 85,699 Workweeks using the Workweek Value, or
3 Defendants, in their sole discretion, may elect to cut off the Class Period and the PAGA Period as
4 of the date the total Workweeks worked by Class Members equals 85,669 Workweeks. For purposes
5 of this escalation clause, the Workweek Value shall be calculated by dividing the Gross Settlement
6 Amount by 77,881 Workweeks, meaning that the Parties agree that the Workweek Value shall be
7 \$27.61 ($\$2,150,000 / 77,881$). Thus, for example, if the Workweeks worked by Class Members
8 during the Class Period is 86,000, Defendants may choose to either (i) increase the Gross Settlement
9 Amount by $\$9,138.91 ((86,000 - 85,669) \times \$27.61)$; or (ii) end the Class Period and PAGA Period
10 on the date on which 85,668 Workweeks are reached.

11 11. The Court deems Phoenix Settlement Administrators (“Phoenix”) the Settlement
12 Administrator, and payment of administrative costs, not to exceed ~~\$12,500.00~~ ^{ALLEGEDLY}, out of the Gross
13 Settlement Amount for services to be rendered by Phoenix on behalf of the class.

14 12. The Settlement Administrator shall prepare and submit to Class Counsel and
15 Defendants’ Counsel a declaration attesting to the completion of the notice process as set forth in
16 the Settlement Agreement, including the number of attempts to obtain valid mailing addresses for
17 and re-sending of any returned Class Notices, as well as the identities, number of and copies of all
18 opt-outs and objections received.

19 13. The Court directs Defendants to, within twenty (20) calendar days of this Order,
20 provide the Settlement Administrator with the “Class Data” or “Class List” for Settlement Class
21 Members. The Class List will include, for each Class Member, his or her: (1) name, last known
22 address(es) and last known telephone number(s); (2) hire dates, termination dates (as applicable)
23 and re-hire dates (as applicable); (3) the number of workweeks worked during the Class Period; and
24 (4) the number of pay periods worked during the PAGA Period.

25 14. Upon receipt of the Class Data, the Settlement Administrator shall perform an
26 address search using the United States Postal Service National Change of Address (the “NCOA”)
27 database and update the addresses contained on the Class Data with the newly found addresses, if
28 any. To the extent that this process yields an updated address, that updated address shall replace the

1 last known address and be treated as the new last known address for purposes of this Settlement,
2 and for subsequent mailings.

3 15. Within fourteen (14) calendar days of receiving the Class List from Defendants, the
4 Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class
5 Members via first-class regular U.S. Mail using the most current mailing address information
6 available.

7 16. "Opt Out Deadline" or "Response Deadline" refers to a date that is forty-five (45)
8 calendar days after the date that the Class Notice is initially mailed to Class Members, and is the
9 deadline by which Class Members' requests to opt out or objections must be postmarked in order to
10 be timely, unless a Class Member's notice is re-mailed, in which case the Class Member shall have
11 an additional fifteen (15) calendar days from re-mailing, or forty-five (45) calendar days from the
12 initial mailing, whichever is later. The date of the postmark shall be the exclusive means for
13 determining whether an opt-out request, objection, or workweek dispute was submitted by the
14 Response Deadline.

15 17. In order to opt out of the Settlement, the Class Member must timely submit by fax,
16 email, or mail, an opt-request request to the Settlement Administrator by the Response Deadline.
17 The opt-out request should state the Class Member's name, address, telephone number, and
18 signature. However, the Settlement Administrator may not reject an opt-out request as invalid
19 because it fails to contain all the information specified in the Class Notice. The Settlement
20 Administrator shall accept any opt-out request as valid if the Settlement Administrator can
21 reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to
22 be excluded.

23 18. Class Members who do not timely opt out of the Settlement will be deemed to
24 participate in the Settlement and shall become a Settlement Class Member without having to submit
25 a claim form or take any other action.

26 19. Any Settlement Class Member who wishes to object to the Settlement must submit a
27 written objection, by fax, email, or mail to the Settlement Administrator no later than the Response
28 Deadline. The objection must include the case name and number and must set forth, in clear and

1 concise terms, a statement of the reasons why the objector believes that the Court should find that
2 the Settlement is not in the best interest of the Class Members and the reasons why the Settlement
3 should not be approved, including the legal and factual arguments supporting the objection.

4 20. Participating Class Members may (though are not required to) appear at the Final
5 Fairness and Approval hearing, either in person, virtually, or through the objector’s own counsel.

6 21. If a Class Member submits both an Objection and a Request for Exclusion, the
7 Request for Exclusion will control and the Objection will be void.

8 22. All papers filed in support of final approval, including supporting documents for
9 attorneys’ fees and costs, shall be filed by FÍ Á& ~ !0Áæ • Á !ā !Á Á@ Áæ Á Á@ Á@æā * È

10 23. A Final Fairness and Approval Hearing shall be held with the Court on
11 Þ[çÄ ÆÖGHÁæF EKÍÁæ È at ____ : ____ .m in Department 12 of the above-entitled Court to determine:

12 (1) whether the proposed settlement is fair, reasonable and adequate, and should be finally approved
13 by the Court; (2) the amount of attorneys’ fees and costs to be awarded to Class Counsel; (3) the
14 amount of service award to the Class Representative; (4) the amount to be paid to the Settlement
15 Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and PAGA
16 Members.

17 24. Within seven (7) calendar days after payment of the full Gross Settlement Amount
18 by Defendants, as well as Employer Taxes, or as soon thereafter as practicable, the Settlement
19 Administrator shall distribute all payments due under the Settlement, including the Individual
20 Settlement Payments to Participating Class Members and Individual PAGA Payments to Aggrieved
21 Employees, as well as the Court-approved payments for the Enhancement Award to Plaintiff,
22 attorneys’ fees and litigation costs and expenses to Class Counsel, Administration Costs to the
23 Settlement Administrator, and the LWDA Payment to the LWDA.

24 25. Any checks from this distribution that are not cashed by Participating Class
25 Members within one-hundred-eighty (180) calendar days from the date of their issuance shall be
26 canceled and funds associated with such checks shall be sent by the Settlement Administrator to
27 the California State Controller’s Office, Unclaimed Property Division, leaving no “unpaid
28

1 residue,” subject to the requirements of California Code of Civil Procedure Section 384, subd.
2 (b).

3 26. In the event the settlement does not become effective in accordance with the terms
4 of the Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to
5 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
6 and the parties shall revert to their respective positions as of the entry of the Settlement Agreement.

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8 **IT IS SO ORDERED.**

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06/08/2023

10 Dated: _____

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Carolyn B. Kuhl

Carolyn B. Kuhl / Judge
Judge of the Superior Court