

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JAN 03 2023

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ROBERT D. WILSON, an individual, on
behalf of himself, the State of California, as
a private attorney general, and on behalf of
all others similarly situated,

Plaintiff,

v.

OCH POWERSPORTS, LP, DBA
ORANGE COUNTY HARLEY
DAVIDSON, a Texas limited partnership;
OCH MANAGEMENT, LLC, a business of
unknown formation; and DOES 1 TO 50,

Defendants.

Case No. 30-2020-01140921-CU-OE-CXC

*Assigned to the Hon. Peter J. Wilson, Dept.
CX101*

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Complaint Filed: May 26, 2020

1 Plaintiff's unopposed Motion for Preliminary Approval of a Class Action Settlement
2 came before this Court on November 17, 2022 in Department CX101, the Honorable Peter
3 Wilson, presiding. The Court having considered the papers submitted in support of the
4 application of the parties, HEREBY ORDERS THE FOLLOWING:

5 1. The Court grants preliminary approval of the Settlement and the Settlement Class
6 based upon the terms set forth in the Settlement Agreement and Release of Class Action and
7 Amendment to the Settlement Agreement (collectively, the "Settlement Agreement") attached
8 herein as **Exhibit A**. All terms used herein shall have the same meaning as defined in the
9 Settlement Agreement. The settlement set forth in the Settlement Agreement appears to be fair,
10 adequate and reasonable to the Class, and the Court preliminarily approves the terms of the
11 Settlement Agreement, including, without limitation:

- 12 a. A non-reversionary Gross Settlement Amount of **\$175,000.00**;
- 13 b. The Class Representative enhancement payment to the named Plaintiff of
14 **\$5,000.00**;
- 15 c. Court approved attorneys' fees to Class Counsel of up to **\$58,333.33**,
16 representing one-third of the Gross Settlement Amount;
- 17 d. Court approved litigation costs to Class Counsel of up to **\$11,000.00**;
- 18 e. Fees and Costs of the Settlement Administrator of up to **\$12,000.00**; and
- 19 f. A PAGA allocation of \$20,000.00, with **\$15,000.00** (i.e., 75%) payable to the
20 California Labor & Workforce Development Agency for its portion of the
21 PAGA penalties.

22 2. This Court has considered the papers in support of the Motion and the Settlement
23 Agreement and finds that pursuant to C.R.C. Rule 3.769(d), the proposed Class should be
24 certified for settlement purposes only. Specifically, the Court finds for settlement purposes only
25 that the proposed Class: (a) is ascertainable; (b) is sufficiently numerous; (c) meets the
26 commonality requirements; (d) the claims of the Class Representative are typical of the claims of
27 the proposed Class Members; (e) Class Representative's counsel has and is able to adequately
28 represent the proposed Class; (f) the Class Representative is adequate to represent the Class; and
(g) class-wide treatment of this dispute is superior to individual litigation because common issues

1 predominate over individual issues for settlement purposes.

2 3. The Settlement falls within the range of reasonableness and appears to be
3 presumptively valid, subject only to any objections that may be raised at the final fairness hearing
4 and final approval by this Court.

5 4. A final fairness hearing on the question of whether the proposed Settlement,
6 attorneys' fees and costs to Class Counsel, and the Class Representative's enhancement award
7 should be finally approved as fair, reasonable and adequate as to the members of the Class is
8 scheduled on the date and time set forth in the implementation schedule in Paragraph 14 below.

9 5. This Court approves, as to form and content, the Notice of Proposed Class Action
10 Settlement and Hearing Date for Court Approval ("Class Notice"), attached herein as **Exhibit B**.
11 The Court approves the procedure for Class Members to participate in, to opt out of, and to object
12 to, the Settlement as set forth in the Settlement Agreement. The Court approves, as to form and
13 content, the Settlement Share Form, and the Exclusion Form, attached herein as **Exhibits C and**
14 **D**, respectively.

15 6. The Court directs the mailing of the Class Notice by first class mail to the Class
16 Members in accordance with the Implementation Schedule set forth below. The Court finds the
17 dates selected for the mailing and distribution of the Notice, as set forth in the Implementation
18 Schedule, meet the requirements of due process and provide the best notice practicable under the
19 circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

20 7. It is ordered that the Settlement Class is preliminarily certified for settlement
21 purposes only.

22 8. The Court preliminarily certifies for settlement purposes only the Settlement Class
23 defined as follows: *all individuals who are or were employed by Defendant(s) as non-exempt*
24 *employees in California during the Class Period. See Settlement Agreement, at § 1.39. The*
25 *Class Period is defined as December 16, 2017 through September 30, 2021. See Settlement*
26 *Agreement, at § 1.10.*

27 9. The Court preliminarily approves for settlement purposes only the PAGA
28 Settlement Class defined as follows: *all individuals who are or were employed by Defendants as*
non-exempt employees in California during the PAGA Period. See Settlement Agreement, at §

1 1.30. The PAGA Period is defined as the period from March 17, 2019, through September 30,
2 2021. *See* Settlement Agreement, at § 1.29.

3 10. All Settlement Class members who do not timely opt out will release those claims
4 arising out of or directly related to the factual allegations set forth in the Complaint and/or PAGA
5 notice to the LWDA, which arose during the Class Period, including claims for: (1) failure to pay
6 minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and
7 the Applicable Wage Orders; (2) failure to pay proper overtime wages in violation of Labor Code
8 sections 510, 1197, and 1198, and the Applicable Wage Orders; (3) failure to pay timely wages
9 during employment in violation of Labor Code sections 204, 210; (4) failure to pay all wages due
10 and owing at separation in violation of Labor Code sections 201, 202, and 203; (5) failure to
11 reimburse business expenses in violation of Labor Code sections 2802 and 2804; (6) failure to
12 provide complete and accurate wage statements in violation of Labor Code sections 226 and
13 226.3; (7) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing
14 in violation of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
15 (8) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6);
16 and (9) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

17 11. All PAGA Settlement Class members will release any and all claims for civil
18 penalties that are pled in the Action under PAGA, or which could have been pursued in the
19 Action under PAGA, based on the factual allegations in the Action alleged in the Complaint and
20 in the PAGA Notice to the LWDA, including but not limited to: failure to pay minimum wages
21 for all hours worked, failure to pay overtime wages, failure to pay wages timely during
22 employment, failure to pay timely wages at separation, failure to provide accurate and itemized
23 wage statements, failure to reimburse for business expenses, pursuant to Labor Code sections
24 201-203, 204, 210, 226, 226.3, 227.3, 510, 1194, 1194.2, 1197, 1197.1, 1198, 2802. This
25 provision has been revised by the Court, and should there be any differences between the
26 Settlement Agreement, as amended, and this Order, this Order shall control.

27 12. The Court preliminarily approves Plaintiff Robert D. Wilson as Class
28 Representative, and Jonathan Melmed and Laura M. Supanich of Melmed Law Group P.C. as

1 Class Counsel.

2 13. The Court appoints ILYM Group, Inc. as the Settlement Administrator.

3 14. To facilitate administration of the Settlement pending final approval, the Court
4 hereby enjoins Plaintiff and all Class Members from filing or prosecuting any claims, suits or
5 administrative proceedings (including filing claims with the Division of Labor Standards
6 Enforcement of the California Department of Industrial Relations) regarding claims released by
7 the Settlement, unless and until such Class Members have filed valid Requests for Exclusion with
8 the Settlement Administrator and the time for filing claims with the Settlement Administrator has
9 elapsed.

10 15. The Court orders the following **Implementation Schedule** for further
11 proceedings:

12	a. Deadline for Defendant to Submit Class Member Information to Settlement Administrator	[within 14 days after the Preliminary Approval Date]
13		
14	b. Deadline for Settlement Administrator to Mail Notice to Class Members	[within 28 days after preliminary approval]
15		
16	c. Deadline for Class Members to Postmark or Fax Requests for Exclusion	[60 days after mailing of the Class Notice]
17		
18	d. Deadline for Class Members to submit written objections to Settlement by Mail or Fax (Class Members may also object to the Settlement by appearing at the Final Approval hearing either in person or through counsel)	[60 days after mailing of the Class Notice]
19		
20		
21	e. Deadline for Class Members to submit any work week disputes by Mail or Fax	[60 days after mailing of the Class Notice]
22		
23		
24	f. Deadline to submit Requests for Exclusion, written objections, or workweek disputes for Class Members whose Class Notices were re-mailed	[14 days from the date of the mailing of the second Class Notice if the Response Deadline would have otherwise passed prior to 14 days from the date of the mailing of the second Class Notice]
25		
26		
27	g. Deadline for Settlement Administrator to provide Class Counsel the Declaration of Due Diligence and Proof of Mailing	[23 days prior to Final Approval and Fairness Hearing]
28		

1	h. Deadline for Class Counsel to file Motion for Final Approval of Settlement, including Request for Attorneys' Fees, Costs, and Enhancement Award	[16 Court days prior to Final Approval and Fairness Hearing]
2		
3		
4	i. Final Approval and Fairness Hearing (the Court's first available date after April 13, 2023)	April 20, 2023 at 2:00 p.m.
5		

6 This provision has been revised by the Court, and should there be any differences between the
7 Settlement Agreement, as amended, and this Order, this Order shall control.

8 16. If any of the dates in this Implementation Schedule falls on a weekend, bank or
9 court holiday, the time to act shall be extended to the next business day.

10 17. The Court shall retain jurisdiction over the Action for all purposes pursuant to
11 California Rule of Court 3.769 and California Rule of Civil Procedure § 664.6 to enforce the
12 terms of the Settlement.

13 **IT IS SO ORDERED.**

14
15 Dated: January 3, 2023

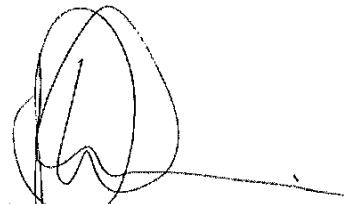
16 
17 Hon. Peter Wilson
18 Judge of the Superior Court, Orange County
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EXHIBIT A

1 **MELMED LAW GROUP P.C.**

Jonathan Melmed (SBN 290218)

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4 1801 Century Park East, Suite 850

Los Angeles, California 90067

5 Phone: (310) 824-3828

6 Fax: (310) 862-6851

7 Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF ORANGE**

10 ROBERT D. WILSON, an individual, on behalf
of himself, the State of California, as a private
attorney general, and on behalf of all others
11 similarly situated,

12 Plaintiff,

13 v.
14

15 OCH POWERSPORTS, LP, DBA ORANGE
COUNTY HARLEY DAVIDSON, a Texas
limited partnership; OCH MANAGEMENT,
16 LLC, a business of unknown formation; and
DOES 1 TO 50,
17

18 Defendants.

Case Number: 30-2020-01140921-CU-OE-CXC

**SETTLEMENT AGREEMENT AND
RELEASE OF CLASS ACTION**

1 **SETTLEMENT AGREEMENT AND RELEASE OF CLASS ACTION**

2 This Settlement Agreement and Release of Class Action ("Settlement Agreement") is made and
3 entered into by: (1) Plaintiff Robert D. Wilson ("Plaintiff"), individually and in his representative
4 capacity on behalf of the Settlement Class, as defined below, and as a private attorney general on behalf
5 of the State of California; and (2) Defendants OCH Powersports, LP, dba Orange County Harley
6 Davidson and OCH Management, LLC (collectively, "Defendants"). Plaintiff and Defendants are
7 collectively referred to herein as the "Parties." This Settlement Agreement is subject to the approval of
8 the Court, pursuant to California Rules of Court, rule 3.769, subdivisions (c), (d), and (e), and is made
9 for the sole purpose of attempting to consummate settlement of the action on a class-wide basis subject
10 to the following terms and conditions. As detailed below, in the event the Court does not enter an order
11 granting final approval of this Settlement Agreement or the conditions precedent are not met for any
12 reason, this Settlement Agreement is void and of no force or effect whatsoever.

13 **1. DEFINITIONS**

14 As used in this Settlement Agreement, the following terms shall have the meanings specified
15 below. To the extent terms or phrases used in this Settlement Agreement are not specifically defined
16 below, but are defined elsewhere in this Settlement Agreement, they are incorporated by reference into
17 this definition section.

18 **1.1. ACTION**

19 "Action" shall mean the following civil action: *Robert D. Wilson v. OCH Powersports, LP, dba*
20 *Orange County Harley Davidson, et al.*, case number 30-2020-01140921-CU-OE-CXC, filed on May
21 26, 2020, in the Superior Court of California for the County of Orange.

22 **1.2. ADMINISTRATIVE EXPENSES**

23 "Administrative Expenses" shall include all costs and expenses associated with and paid to the
24 third-party settlement administrator, which are estimated not to exceed \$12,000.00.

25 **1.3. APPLICABLE WAGE ORDERS**

26 "Applicable Wage Orders" shall mean the California Industrial Welfare Commission ("IWC")
27 Wage Orders applicable to the facts of this case, including IWC Wage Orders 7-2001 and 9-2001 and
28 others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11070, 11090.)

1 **1.4. CLAIMS**

2 "Claims" shall mean the claims asserted in the Action.

3 **1.5. CLASS ATTORNEY FEES AND EXPENSES**

4 "Class Attorney Fees and Expenses" shall mean the portion of the Gross Settlement Amount
5 attributable to attorney fees and litigation expenses. The Parties agree that the fee portion of the Class
6 Attorney Fees and Expenses shall be up to one-third of the Gross Settlement Amount (i.e., \$58,333.33),
7 as approved by the Court, and the award of costs and expenses shall be up to an additional \$11,000.00.

8 **1.6. CLASS COUNSEL**

9 "Class Counsel" shall mean Jonathan Melmed and Laura Supanich of Melmed Law Group P.C.

10 **1.7. CLASS MEMBER**

11 "Class Member" shall mean any person who is a prospective member of the Settlement Class,
12 or, if such person is incompetent or deceased, the person's legal guardian, executor, heir, or successor-
13 in-interest.

14 **1.8. CLASS NOTICE**

15 "Class Notice" shall mean the *Notice of Proposed Class Action Settlement*, as set forth in the
16 form of Exhibit 1 attached hereto, or as otherwise approved by the Court, which is to be mailed to
17 Class Members along with the Share Form.

18 **1.9. CLASS PARTICIPANTS**

19 "Class Participants" shall mean all Class Members who do not timely request exclusion from
20 the Class Settlement.

21 **1.10. CLASS PERIOD**

22 "Class Period" shall mean the period from December 16, 2017 (the date on which the company
23 began operations) through September 30, 2021 (the date on which Defendant ceased operations).

24 **1.11. CLASS REPRESENTATIVE**

25 "Class Representative" shall mean Plaintiff Robert D. Wilson.

26 **1.12. CLASS SETTLEMENT**

27 "Class Settlement" shall mean the settlement embodied in this Settlement Agreement, which is
28 subject to Court approval.

1 **1.13. COMPLAINT**

2 "Complaint" shall mean the currently-operative complaint in the Action.

3 **1.14. COURT**

4 "Court" shall mean the Superior Court of the County of Orange.

5 **1.15. DEFENDANTS**

6 "Defendants" shall mean Defendants OCH Powersports, LP, dba Orange County Harley
7 Davidson and OCH Management, LLC.

8 **1.16. DEFENSE COUNSEL**

9 "Defense Counsel" shall mean the attorneys representing Defendants.

10 **1.17. EFFECTIVE DATE**

11 "Effective Date" shall be the date when all of the following events have occurred: (a) this
12 Settlement Agreement has been executed by all Parties and by Class Counsel and Defense Counsel;
13 (b) the Court has given preliminary approval to the Class Settlement; (c) notice has been given to the
14 Settlement Class providing them with an opportunity to request exclusion from the Class Settlement;
15 (d) the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
16 certifying the Settlement Class and approving this Settlement Agreement; and (e) the later of the
17 following events: (i) the expiration of the period for filing any appeal, writ, or other appellate
18 proceeding opposing the Class Settlement has elapsed without any appeal, writ, or other appellate
19 proceeding having been filed; (ii) the dismissal of any appeal, writ, or other appellate proceeding
20 opposing the Class Settlement with no right to pursue further remedies or relief; or (iii) any appeal,
21 writ, or the issuance of such other final appellate order upholding the Court's final order with no right
22 to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Class
23 Settlement shall not become effective until the Court's order approving the Class Settlement is
24 completely final and there is no further recourse by an appellant or objector who seeks to contest the
25 Class Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through
26 (d) are completed (i.e., the date that the court has entered a final order and judgment certifying the
27 Settlement Class and approving this Settlement Agreement).

1 **1.18. EMPLOYEE'S TAXES AND REQUIRED WITHHOLDING**

2 "Employee's Taxes and Required Withholding" shall mean the employee's share of any and all
3 applicable federal, state, or local payroll taxes, including those collected under authority of the Federal
4 Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and/or the State
5 Unemployment Tax Act (SUTA) on the portion of any Class Participant's Individual Settlement
6 Amount that constitutes wages. The Employee's Taxes and Required Withholdings will be withheld
7 from and paid out of the Net Settlement Amount.

8 **1.19. EMPLOYER'S TAXES**

9 "Employer's Taxes" shall mean and refer to Defendants' share of payroll taxes (e.g.,
10 Unemployment Insurance, Employment Training Tax, Social Security, and Medicare taxes) that is
11 owed on the portion of any Class Participant's Individual Settlement Amount that constitutes wages.
12 The Employer's Taxes shall be separately paid by Defendants and shall not be paid from the Gross
13 Settlement Amount or Net Settlement Amount.

14 **1.20. FINAL APPROVAL AND FAIRNESS HEARING**

15 "Final Approval and Fairness Hearing" shall mean the final hearing held to ascertain the
16 fairness, reasonableness, and adequacy of the Class Settlement.

17 **1.21. GROSS SETTLEMENT AMOUNT**

18 "Gross Settlement Amount" is the agreed upon non-reversionary settlement amount totaling
19 \$175,000.00 to be paid by Defendants in full settlement of the Released Claims asserted in this case,
20 inclusive of the Administrative Expenses, the Employee's Taxes and Required Withholdings, the Class
21 Attorney Fees and Expenses, the Incentive Award, and PAGA Payment. Defendants shall separately
22 pay its share of the Employer's Taxes in addition to the Gross Settlement Amount on the portion of
23 each Individual Settlement Amount allocated as wages.

24 **1.22. HEARING ON PRELIMINARY APPROVAL**

25 "Hearing on Preliminary Approval" shall mean the hearing held on the motion for preliminary
26 approval of the Class Settlement.

27

28

1 **1.23. INCENTIVE AWARD**

2 "Incentive Award" shall mean any additional monetary payment provided to the Class
3 Representative for his efforts and risks on behalf of the Settlement Class in this Action.

4 **1.24. INDIVIDUAL SETTLEMENT AMOUNT**

5 "Individual Settlement Amount" shall mean the amount which is ultimately distributed to each
6 Class Participant, less any Employee's Taxes and Required Withholdings. The Individual Settlement
7 Amount does not include any portion of the PAGA Payment.

8 **1.25. NET SETTLEMENT AMOUNT**

9 "Net Settlement Amount" shall mean the Gross Settlement Amount minus: Administrative
10 Expenses; Class Attorney Fees and Expenses; 75% of the share of the Gross Settlement Amount
11 allocated toward penalties pursuant to the Labor Code Private Attorney General Act of 2004
12 ("PAGA"), codified at Labor Code sections 2698 through 2699.6, which are payable to the California
13 Labor and Workforce Development Agency ("LWDA"); and Plaintiff's Incentive Award.

14 **1.26. OPT OUT**

15 "Opt Out" shall refer to the process of submitting a timely and valid request exclusion from the
16 Class Settlement in accordance with the terms of the Class Notice and no later than the Response
17 Deadline.

18 **1.27. OPT-OUTS**

19 "Opt-Outs" shall mean all persons who timely and validly request exclusion from the Class
20 Settlement in accordance with the terms of the Class Notice and no later than the Response Deadline.

21 **1.28. PAGA PAYMENT**

22 "PAGA Payment" means the penalties pursuant to PAGA that the Parties have agreed is a
23 reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is
24 \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699
25 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
26 twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. Class Counsel shall give
27 timely notice of this Settlement Agreement to the LWDA pursuant to Labor Code section 2699,
28 subdivision (1)(2).

1 **1.29. PAGA PERIOD**

2 "PAGA Period" shall mean the period from March 17, 2019, through September 30, 2021 (the
3 date on which Defendant ceased operations).

4 **1.30. PAGA SETTLEMENT CLASS**

5 "PAGA Settlement Class" shall mean all individuals who are or were employed by Defendants
6 as non-exempt employees in California during the PAGA Period. Defendants represent that the PAGA
7 Settlement Class consists of approximately 85 employees that worked a total of approximately 1,400
8 bi-weekly pay periods during the PAGA Period.

9 **1.31. PARTIES**

10 "Parties" shall mean Plaintiff and Defendants.

11 **1.32. PLAINTIFF**

12 "Plaintiff" shall mean Plaintiff Robert D. Wilson.

13 **1.33. PRELIMINARY APPROVAL DATE**

14 "Preliminary Approval Date" shall mean the date upon which the Court enters an order
15 preliminarily approving this Settlement Agreement.

16 **1.34. RELEASED CLAIMS**

17 "Released Claims" shall mean those claims arising out of or related to the allegations set forth
18 in the Complaint and/or PAGA notice to the LWDA, which arose during the Class Period, including
19 claims for: (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections
20 1194 and 1194.2, and the Applicable Wage Orders; (2) failure to pay proper overtime wages in
21 violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage Orders; (3) failure to
22 pay timely wages during employment in violation of Labor Code sections 204, 210; (4) failure to pay
23 all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203; (5) failure
24 to reimburse business expenses in violation of Labor Code sections 2802 and 2804; (6) failure to
25 provide complete and accurate wage statements in violation of Labor Code sections 226 and 226.3;
26 (7) deceptive, fraudulent, or otherwise unlawful business practices based on the foregoing in violation
27 of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); (8) statutory penalties
28

1 based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (9) all claims for
2 liquidated damages, penalties, interest, fees, costs based on the foregoing.

3 No other claims are released other than those claims specifically plead in the Complaint or
4 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,
5 or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability
6 benefits of any nature. Nor does it release any claims, actions, or causes of action which may be
7 possessed by Class Members under state or federal discrimination statutes, including, without
8 limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900-12996); the Unruh
9 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of
10 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the
11 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their
12 implementing regulations and interpretive guidelines.

13 **1.35. RELEASED PARTIES**

14 "Released Parties" shall mean Defendants and all of Defendants' subsidiaries, affiliates,
15 shareholders, members, agents, predecessors, successors, and assigns.

16 **1.36. RELEASING PARTIES**

17 "Releasing Parties" shall mean every Class Participant and all persons purporting to act on their
18 behalf or purporting to assert a claim under or through them, including, but not limited to, their
19 dependents, heirs, assigns, beneficiaries, devisees, legatees, executors, administrators, agents, trustees,
20 conservators, guardians, personal representatives, and successors-in-interest, whether individual, class,
21 representative, legal, equitable, direct or indirect, or any other type or in any other capacity.

22 **1.37. RESPONSE DEADLINE**

23 "Response Deadline" shall mean the date forty-five (45) days following the date on which the
24 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
25 Members may submit a request for exclusion and/or objection to Class Settlement.

1 **1.38. SETTLEMENT ADMINISTRATOR**

2 "Settlement Administrator" shall mean ILYM Group, Inc. (or other administrator agreed on by
3 the parties) which the Parties have agreed will be responsible for administration of the Class Settlement
4 and related matters.

5 **1.39. SETTLEMENT CLASS**

6 "Settlement Class" shall mean all individuals who are or were employed by Defendant(s) as
7 non-exempt employees in California during the the Class Period. Defendants represent that the
8 Settlement Class consists of approximately 140 Class Members that worked a total of approximately
9 2,250 bi-weekly pay periods during the Class Period.

10 **1.40. SHARE FORM**

11 "Share Form" shall mean the *Class Action Settlement Share Form*, as set forth in the form of
12 Exhibit 2 attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
13 Members along with the Class Notice.

14 **2. FACTUAL AND PROCEDURAL BACKGROUND**

15 **2.1. PLAINTIFF'S CLAIMS**

16 Plaintiff, individually and in his representative capacity on behalf of the Settlement Class, and
17 as a private attorney general on behalf of the State of California, has alleged the following violations:
18 (1) failure to pay minimum wage for all hours worked in violation of Labor Code sections 1194 and
19 1194.2, and the Applicable Wage Orders; (2) failure to pay proper overtime wages in violation of Labor
20 Code sections 510, 1197, and 1198, and the Applicable Wage Orders; (3) failure to pay timely wages
21 during employment in violation of Labor Code sections 204, 210; (4) failure to pay all wages due and
22 owing at separation in violation of Labor Code sections 201, 202, and 203; (5) failure to reimburse
23 business expenses in violation of Labor Code sections 2802 and 2804; (6) failure to provide complete
24 and accurate wage statements in violation of Labor Code sections 226 and 226.3; (7) deceptive,
25 fraudulent, or otherwise unlawful business practices based on the foregoing in violation of California's
26 Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17210); and (8) statutory penalties based on
27 the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6).

28

1 **2.2. DISCOVERY, INVESTIGATION, RESEARCH, AND MEDIATION**

2 Class Counsel has conducted significant informal discovery during the prosecution of the
3 Action. This discovery, investigation, and prosecution has included, among other things, (a) over a
4 dozen telephonic conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of
5 documents and other information produced by Plaintiff and Defendants; (c) analysis of employment
6 data from a sample of Class Members; (d) an analysis of the legal positions taken by Defendants;
7 (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis
8 of potential class-wide damages, including information sufficient to understand Defendants' potential
9 defenses to Plaintiff's claims; (f) research of the applicable law with respect to the claims asserted in
10 the Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for
11 calculating damages.

12 Class Counsel and the Class Representative have vigorously prosecuted this case, and
13 Defendants has vigorously contested it. The Parties have engaged in sufficient investigation and
14 discovery to assess the relative merits of the claims of the Class Representative and of the defenses to
15 them. After such discovery, investigation, and prosecution, the Parties attended a full-day mediation
16 with an experienced employment law mediator, which culminated in a settlement in principle, the terms
17 of which are elaborated in this Settlement Agreement.

18 **2.3. ALLEGATIONS OF THE CLASS REPRESENTATIVE AND BENEFITS OF CLASS**
19 **SETTLEMENT**

20 The document and data exchange in this matter, as well as discussions between counsel, have
21 been adequate to give the Class Representative and Class Counsel a sound understanding of the merits
22 of their positions and to evaluate the value of the claims of the Settlement Class. The informal discovery
23 conducted in this Action and the information exchanged by the Parties through pre-mediation
24 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
25 compromise the issues on a fair and equitable basis.

26 The Class Representative and Class Counsel believe that the claims, causes of action,
27 allegations, and contentions asserted in the Action have merit. However, the Class Representative and
28 Class Counsel recognize and acknowledge the expense and delay of continued lengthy proceedings

1 necessary to prosecute the Action against Defendants through trial and through appeals. Class Counsel
2 has taken into account the uncertain outcome of the litigation, the risk of continued litigation in complex
3 actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential
4 difficulty of obtaining certification of the Settlement Class as well as trying the claims of the class.
5 Class Counsel is mindful of the potential problems of proof under, and possible defenses to, the claims
6 alleged in the Action.

7 The Class Representative and Class Counsel believe that the settlement set forth in this
8 Settlement Agreement confers substantial benefits upon Plaintiff and the Settlement Class and that an
9 independent review of this Settlement Agreement by the Court in the approval process will confirm
10 this conclusion. Based on their own independent investigation and evaluation, Class Counsel has
11 determined that the settlement set forth in this Settlement Agreement is in the best interests of Plaintiff
12 and the Class Members.

13 **2.4. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

14 Defendants have denied and continue to deny all allegations, claims, and contentions alleged
15 by Plaintiff in the Action. Defendants have expressly denied and continue to deny all charges of
16 wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions
17 alleged in the Action. Defendants contend that they complied with California and federal wage and
18 hour laws and have dealt legally and fairly with Plaintiff and the Class Members.

19 Defendants further deny that, for any purpose other than settling this Action, these claims are
20 appropriate for class or representative treatment. Nonetheless, Defendants have concluded that further
21 proceedings in the Action would be protracted and expensive and that it is desirable that the Action be
22 fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement
23 Agreement to dispose of burdensome and protracted litigation, to permit the operation of Defendants'
24 respective businesses without further expensive litigation and the distraction and diversion of their
25 personnel with respect to matters at issue in the Action. Defendants have also taken into account the
26 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
27 Defendants have, therefore, determined that it is desirable and beneficial to them that the Action be
28 settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

1 **2.5. INTENT OF THE CLASS SETTLEMENT**

2 The Class Settlement set forth herein intends to achieve the following: (1) entry of an order
3 approving the Class Settlement; (2) entry of judgment of the Action; (3) discharge of the Released
4 Parties from liability for any and all of the Released Claims; and (4) discharge of Defendants from
5 liability for any and all claims arising out of the Action.

6 **3. CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS**

7 For the purposes of this Settlement Agreement and the Class Settlement of this Action only, the
8 Parties agree to conditional class certification of the Settlement Class. Defense Counsel believes this
9 conditional certification is appropriate because the Released Claims are being compromised without
10 need to establish the elements of those claims on which liability turns. The certification of the
11 Settlement Class shall not constitute, in this or any other proceeding, an admission of any kind by
12 Defendants, including without limitation, that certification of a class for trial purposes is or would be
13 warranted, appropriate or proper; or that Plaintiff could establish any of the requisite elements for class
14 treatment of any of the claims in the Action.

15 In the event that the Settlement Agreement is not finally approved by the Court, a Final
16 Effective Date is not achieved, or the Class Settlement is rejected, terminated, or otherwise rendered
17 null and void as set forth herein, then certification of the Settlement Class shall be automatically
18 vacated, shall be void *ab initio*, of no force or effect, and shall not constitute evidence or a binding
19 determination that the requirements for certification of a class for trial purposes in this Action or in any
20 other action which have been, are or can be, satisfied. Further, if the Agreement does not reach a Final
21 Effective Date, Plaintiff agrees that Plaintiff will not argue, claim, reference, or otherwise raise any
22 preliminary approval of the Settlement Class in connection with any later proceeding before the Court.

23 **4. APPOINTMENT OF CLASS COUNSEL**

24 For purposes of this Settlement Agreement and subject to the Court's approval, the Parties agree
25 to the appointment of Class Counsel as counsel for the Settlement Class and the effectuation of the
26 Class Settlement pursuant to this Settlement Agreement.

1 **5. CONSIDERATION**

2 **5.1. SETTLEMENT AMOUNT**

3 The Parties agree to settle this Action for the Gross Settlement Amount of \$175,000.00. There
4 shall be no reversion to Defendants. Defendants shall pay the Gross Settlement Amount in full. The
5 Gross Settlement Amount and other actions and forbearances taken by Defendants shall constitute
6 adequate consideration for the Class Settlement and will be made in full and final settlement of: the
7 Released Claims, the Class Attorney Fees and Expenses, Administrative Expenses, the Incentive
8 Award, the PAGA Payment (and any payments to individual PAGA Class Members resulting from the
9 PAGA Payment), and any other obligation of Defendants under this Settlement Agreement (other than
10 the Employer's Taxes on the portion of the Net Settlement Amount allocated to the payment of wages).

11 After the Court issues an order preliminarily approving this Class Settlement, the Settlement
12 Administrator will distribute the Class Notice to the Class Members, which shall describe the terms of
13 the Class Settlement and procedures to Opt Out, object, or participate in the Class Settlement as well
14 as the Share Form, which shall identify the Class Member, the number of bi-weekly pay periods worked
15 by each Class Member ("Bi-Weekly Pay Periods"), as well as the estimated amount of the Individual
16 Settlement Amount the Class Member can expect to receive once the Class Settlement becomes
17 effective on the Effective Date. Class Members shall be given the opportunity to challenge their bi-
18 weekly pay periods information.

19 **5.2. INCENTIVE AWARD FOR PLAINTIFF**

20 Plaintiff may petition the Court to approve an Incentive Award in an amount up to \$5,000.00
21 for Robert D. Wilson to acknowledge his efforts on behalf of the Settlement Class in this Action,
22 including assisting in the investigation and consulting with Class Counsel and providing crucial
23 documents to Class Counsel. Defendants shall not oppose any request by Plaintiff for an Incentive
24 Award in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from
25 the Gross Settlement Amount and shall be in addition to any distribution to which he may otherwise
26 be entitled as a Class Participant. Any Incentive Award approved by the Court shall not be considered
27 wages, and the Settlement Administrator shall issue to Plaintiff an IRS Form 1099 reflecting such
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1 payment. Plaintiff shall be responsible for the payment of all taxes with respect to any Incentive Award
2 approved by the Court and shall hold Defendants harmless from all liability with regard thereto.

3 **5.3. PAYMENT TO CLASS PARTICIPANTS**

4 Each Class Participant shall be eligible to receive payment of the Individual Settlement
5 Amount, which is a share of the Net Settlement Amount based on the pro rata number of weeks worked
6 by the Class Members during the Class Period as a proportion of all weeks worked by all Class
7 Members. Each Class Participant, including Plaintiff, shall be responsible for the payment of the
8 Employee's Taxes and Required Withholding with respect to his or her Individual Settlement Amount
9 and shall hold Defendants harmless from any and all liability with regard thereto.

10 **5.4. PAYMENT TO PAGA SETTLEMENT CLASS**

11 Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA
12 Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have
13 agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which
14 is \$20,000.00. The PAGA Payment must be approved by the Court pursuant to Labor Code section
15 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA
16 and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class. The portion of the
17 PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement
18 Class based on the pro rata number of pay periods worked by each particular PAGA Settlement Class
19 member during the PAGA Period as a proportion of all pay periods worked by all members of the
20 PAGA Settlement Class.

21 **5.5. TAX TREATMENT AND PAYMENT**

22 For the purpose of calculating Employee's Taxes and Required Withholding for the Individual
23 Settlement Amounts for Class Participants (including any payments to the Class Representative but
24 exclusive of his Incentive Award), the Parties agree that 20% of each Individual Settlement Amount
25 shall constitute payment in the form of wages (and each Class Participant will be issued an IRS Form
26 W-2 for such payment to him or her), and 80% of each Individual Settlement Amount shall constitute
27 penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment
28 to him or her). Prior to final distribution, the Settlement Administrator shall calculate the total

1 Employee's Taxes and Required Withholding due as a result of the wage portion of Class Participants'
2 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
3 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Amount and final
4 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
5 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendants
6 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
7 Class Participants who receive any payment pursuant to this Settlement Agreement shall be solely
8 responsible for all other individual tax obligations.

9 With respect to the PAGA Payment and any payments made to individual members of the
10 PAGA Settlement Class, all such payments shall be treated as payments owing for penalties and interest
11 thereon and shall not be considered wages. The Settlement Administrator shall issue to members of the
12 PAGA Settlement Class an IRS Form 1099 reflecting such payment. Members of the PAGA Settlement
13 Class shall be solely responsible for the payment of all taxes with respect to any PAGA payments made
14 to them.

15 **5.6. NO EFFECT ON EMPLOYEE BENEFIT PLANS**

16 Neither the Class Settlement nor any amounts paid under the Class Settlement will modify any
17 previously credited hours, days, or weeks of service under any employee benefit plan, policy or bonus
18 program sponsored by Defendants. Such amounts will not form the basis for additional contributions
19 to, benefits under, or any other monetary entitlement under Defendants' sponsored benefit plans,
20 policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall
21 not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any
22 other form of compensation for the purposes of any of Defendants' benefit plan, policy, or bonus
23 program. Defendants retain the right to modify the language of their benefits plans, policies, and bonus
24 programs to reflect this intent and to make clear that any amounts paid pursuant to this Settlement
25 Agreement are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring
26 term as defined by applicable plans, policies, and bonus programs for purpose of eligibility, vesting,
27 benefit accrual, or any other purpose, and that additional contributions or benefits are not required by
28 this Settlement Agreement. Defendants do not consider the Class Settlement payments "compensation"

1 for purposes of determining eligibility for, or benefit accrual within, any benefit plans, policies, or
2 bonus programs, or any other plan sponsored by Defendants.

3 **5.7. CLASS ATTORNEY FEES AND EXPENSES**

4 As part of the motion for final approval of the Class Settlement, Class Counsel may apply for
5 an award of Class Attorney Fees and Expenses with the fee portion not to exceed one-third of the Gross
6 Settlement Amount (i.e., \$58,333.33) and the award of costs and expenses up to an additional
7 \$11,000.00. Defendants agree to not object to any such fee, cost, or expense application in those
8 amounts.

9 As a condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the
10 manner reflected by this subsection. Any Class Attorney Fees and Expenses awarded by the Court shall
11 be paid from the Gross Settlement Amount prior to arriving at the Net Settlement Amount and shall
12 not constitute payment to any Class Members. If Class Counsel voluntarily reduces the request for
13 Class Attorney Fees and Expenses or the Court's award of Class Attorney Fees and Expenses is less
14 than set forth above, the Net Settlement Amount shall be recalculated to reflect the actual Class
15 Attorney Fees and Expenses awarded.

16 The Class Attorney Fees and Expenses approved by the Court shall reflect: (a) all work
17 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
18 represent the Settlement Class through the date of this Settlement Agreement; (b) all work to be
19 performed and costs to be incurred in connection with approval by the Court of the Class Settlement;
20 (c) all work to be performed and costs and expenses, if any, incurred in connection with administering
21 the Class Settlement through the Effective Date and dismissal of the Action with prejudice; and (d) may
22 be based on the "catalyst theory" and/or the "common fund doctrine."

23 **6. SETTLEMENT ADMINISTRATION**

24 **6.1. COSTS AND EXPENSES**

25 All costs and expenses due to the Settlement Administrator in connection with its administration
26 of the Class Settlement, including, but not limited to, providing the Class Notice, locating Class
27 Members, processing Opt Out requests and objections, distributing the portion of the PAGA Payment
28 payable to the LWDA, distributing the portion of the PAGA Payment payable to the members of the

1 PAGA Settlement Class, and calculating, administering and distributing Individual Settlement
2 Amounts to the Class Participants and related tax forms, shall be paid from the Gross Settlement
3 Amount, and is not expected to exceed \$12,000.00.

4 **6.2. PAYMENT BY DEFENDANTS**

5 Defendants shall deposit the Gross Settlement Amount in a lump sum payment plus the
6 employer-side payroll taxes to the Settlement Administrator within fifteen (15) days of the Effective
7 Date. In no event shall Defendants be obligated to pay or deposit with the Settlement Administrator
8 more than \$175,000.00 plus the Employer's Taxes, except where the Escalator Provision is triggered.

9 **7. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

10 **7.1. THE SETTLEMENT ADMINISTRATOR**

11 The Settlement Administrator will be responsible for: mailing the Class Notice and Share Form
12 (Exhibit 1 and Exhibit 2, respectively) to Class Members; posting notice of entry of final order and
13 judgment certifying the Class Settlement and approving this Settlement Agreement; handling inquiries
14 from Class Members concerning the Class Notice; determining Individual Settlement Amounts;
15 determining individual payments to members of the PAGA Settlement Class; maintaining the
16 settlement funds in an appropriate interest-bearing account; preparing, administering, and distributing
17 Individual Settlement Amounts to Class Participants; preparing, administering, and distributing
18 individual payments to members of the PAGA Settlement Class; distributing the portion of the PAGA
19 Payment payable to the LWDA; issuing a final report and performing such other duties as the Parties
20 may direct. Additionally, the Settlement Administrator will handle all tax document preparation and
21 reporting, including state and federal tax forms, if any.

22 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
23 Defense Counsel with summary information updating them as to the number of validated and timely
24 objections and Opt Out requests. The Settlement Administrator will serve on Class Counsel and
25 Defense Counsel via e-mail date-stamped copies of the original Opt Out requests and objections no
26 later than seven (7) days after their receipt. The Settlement Administrator will provide Class Counsel
27 with proof of mailing of the Class Notice, without listing individual Class Member names which the
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1 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
2 of the Court's Final Approval and Fairness Hearing.

3 No later than seven (7) days prior to the Final Approval and Fairness Hearing, the Settlement
4 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary
5 information regarding: (a) the total amount of final Individual Settlement Amounts of each Class
6 Participant, without any identifying personal information; (b) the number of Class Participants to
7 receive such payments, and (c) the final number of Opt-Outs and objections.

8 Administrative Expenses are not anticipated to exceed \$12,000.00. Prior to the calculation and
9 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the
10 total Administrative Expenses through the conclusion of their services and such actual amount will be
11 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
12 Amounts.

13 **7.2. NOTICE TO CLASS MEMBERS**

14 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
15 after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with an
16 updated list of Class Members and members of the PAGA Settlement Class containing names, social
17 security numbers, dates of employment, last-known addresses, and phone numbers (the "Database").
18 The Database shall be marked "Confidential – Settlement Administrator's Eyes Only." Class Counsel
19 shall not receive a copy of this list.

20 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
21 Administrator shall determine the number of bi-weekly pay periods worked by each Class Member,
22 populate the data for each Class Member accordingly, and send each Class Member the Class Notice
23 via first-class, United States mail. The Class Notice shall also contain an easily-understood statement
24 alerting the Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member
25 is releasing and waiving all Released Claims against the Released Parties.

26 The Class Notice will inform Class Members of their estimated share of the settlement and the
27 number of bi-weekly pay periods they worked during the Class Period. Class Members may dispute
28 their bi-weekly pay periods if they believe they worked more weeks in the Class Period than

Defendants' records show by submitting information to the Settlement Administrator no later than forty-five (45) days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendants to resolve the dispute in good faith. If Plaintiff and Defendants cannot agree over the bi-weekly pay periods to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Class Member and Defendants.

7.3. OPT OUT PROCEDURE

Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate in the Class Settlement and shall become Class Participants without having to submit a claim form or take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or postcard to the Settlement Administrator by the Response Deadline. The Opt Out request must state the Class Member's name, address, telephone number, and signature. The Opt Out request should state something to the effect of:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ROBERT D. WILSON V. OCH POWERSPORTS, LP, DBA ORANGE COUNTY HARLEY DAVIDSON, ET AL.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE."

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 United States Postal Service, the Settlement Administrator shall perform a skip trace search and seek an address correction for such Class Members, and a second Class Notice will be sent to any new or different address obtained. Such Class Members shall have an additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt Out if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date of the mailing of the second Class Notice.

1 It will be presumed that, if an envelope containing the Class Notice has not been returned within
2 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least seven (7)
3 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
4 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
5 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
6 specify the number of Class Members to whom the Class Notice was sent and the number of Class
7 Members to whom the Class Notice was not delivered, as well as information relating to the number
8 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

9 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
10 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
11 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
12 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
13 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
14 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

15 Class Participants will be bound by the Release of Released Claims set forth in the definition
16 of "Released Claims" provided in this Settlement Agreement.

17 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
18 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
19 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
20 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

21 **7.4. OBJECTION PROCEDURE**

22 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
23 Any Class Member who wishes to object to the Class Settlement may submit a written objection to the
24 Settlement Administrator no later than the Response Deadline. Only Class Participants may object to
25 the Settlement. The objection should include the case name and number and must set forth, in clear and
26 concise terms, a statement of the reasons why the objector believes that the Court should find that the
27 proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why the
28 Class Settlement should not be approved, including the legal and factual arguments supporting the

1 objection. If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person
2 or through an attorney, they may do so. The Settlement Administrator will promptly serve copies of
3 any objection or notice of intention to appear on Class Counsel and Defense Counsel. Class Members
4 wishing to make an objection may appear at the Final Approval and Fairness Hearing, either in person
5 or through a lawyer retained at their own expense.

6 **7.5. NOTICE OF FINAL JUDGMENT**

7 Within ten (10) days after the Court has held a Final and Fairness Approval Hearing and entered
8 a final order certifying the Class for settlement purposes only and approving the Class Settlement, the
9 Settlement Administrator will give notice of judgment to Class Members pursuant to rule 3.771(b) of
10 the California Rules of Court, by posting a copy of said order and final judgment on its website at a
11 web address to be included in the Class Notice.

12 **8. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

13 **8.1. ALLOCATION OF THE GROSS SETTLEMENT AMOUNT**

14 The claims of all Class Members are settled for the Gross Settlement Amount of \$175,000.00,
15 which will be allocated as follows:

- 16 1. The Administrative Expenses, estimated not to exceed \$12,000.00;
- 17 2. Class Counsel's attorney fees not to exceed \$58,333.33;
- 18 3. Class Counsel's litigation costs and expenses not to exceed \$11,000.00;
- 19 4. The Incentive Award, not to exceed \$5,000.00; and
- 20 5. PAGA Payment to LWDA of \$15,000.00.

21 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement
22 Administrator shall calculate the estimated Net Settlement Amount based on the estimated values
23 provided above prior to sending Notice to the Class Members. Prior to final distribution, the Settlement
24 Administrator shall recalculate the final Net Settlement Amount based on the actual values of the
25 amounts in each category.

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8.2. CALCULATION OF THE INDIVIDUAL SETTLEMENT AMOUNTS FOR CLASS PARTICIPANTS

Individual Settlement Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net Settlement Amount shall be distributed pro rata on a "checks cashed" basis based on the proportional number of weeks worked by each Class Member during the Class Period.

Defendants will provide the Settlement Administrator with any information reasonably necessary to perform the calculation of number of bi-weekly pay periods for each Class Member, and any other reasonably required information the Settlement Administrator requests to perform the calculations required under this Settlement Agreement. Defendants shall have no responsibility for deciding the validity of the Individual Settlement Amounts or any other payments made pursuant to this Settlement Agreement, shall have no involvement in or responsibility for the determination or payment of Employee's Taxes and Required Withholding, and shall have no liability for any errors made with respect to such Employee's Taxes and Required Withholding. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and Incentive Awards.

8.3. CALCULATION OF THE PAYMENTS FOR INDIVIDUAL MEMBERS OF THE PAGA SETTLEMENT CLASS

Each member of the PAGA Settlement Class shall be entitled to receive a portion of the PAGA Payment. The PAGA Payment shall consist of the penalties pursuant to PAGA that the Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Class.

The portion of the PAGA Payment allocated to the PAGA Settlement Class shall be distributed to the PAGA Settlement Class based on the pro rata number of pay periods worked by each particular

1 PAGA Settlement Class member during the PAGA Period as a proportion of all pay periods worked
2 by all PAGA Settlement Class members during the PAGA Period. Each member of the PAGA
3 Settlement Class, including Plaintiff, shall be responsible for the payment of the Employee's Taxes and
4 Required Withholding with respect to their share of the PAGA Payment and shall hold Defendants
5 harmless from any and all liability with regard thereto.

6 Defendants will provide the Settlement Administrator with any information reasonably
7 necessary to perform the calculation of number of pay periods worked for each PAGA Settlement Class
8 member, and any other reasonably required information the Settlement Administrator requests to
9 perform the calculations required under this Settlement Agreement. Defendants shall have no
10 responsibility for deciding the validity of the individual payment amounts allocated to each member of
11 the PAGA Settlement Class or any other payments made pursuant to this Settlement Agreement, shall
12 have no involvement in or responsibility for the determination or payment of Employee's Taxes and
13 Required Withholding, and shall have no liability for any errors made with respect to such Employee's
14 Taxes and Required Withholding.

15 The members of the PAGA Settlement Class shall be solely responsible for any and all tax
16 obligation associated with their respective shares of the PAGA Payment.

17 **8.4. TIME FOR PAYMENT OF ATTORNEY FEES AND EXPENSES**

18 The Settlement Administrator shall distribute to Class Counsel any attorney fees and expenses
19 approved by the Court no later than twenty (20) days after the Effective Date.

20 **8.5. TIME FOR PAYMENT OF INCENTIVE AWARD**

21 The Settlement Administrator shall distribute to Plaintiff the Incentive Award approved by the
22 Court no later than twenty (20) days after the Effective Date.

23 **8.6. TIME FOR PAYMENT OF PAGA PAYMENT TO THE LWDA**

24 The Settlement Administrator shall distribute to the LWDA the portion of the PAGA Payment
25 due to it and approved by the Court no later than twenty (20) days after the Effective Date.
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1 **8.7. TIME FOR PAYMENT OF TAXES AND REQUIRED WITHHOLDING AND**
2 **INDIVIDUAL SETTLEMENT AMOUNTS**

3 The Settlement Administrator shall make every effort to pay the Employee's Taxes and
4 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
5 the Individual Settlement Amount to each Class Participant, by first-class United States mail, to the
6 last-known address no later than twenty (20) days after the Effective Date. If the Settlement
7 Administrator is not able to do so within the time period set forth above, it shall so inform Class Counsel
8 and Defense Counsel and provide an approximate date by which the Employee's Taxes and Required
9 Withholding shall be paid and the Individual Settlement Amounts will be mailed. Under no
10 circumstances shall the Settlement Administrator distribute checks to Class Participants until all
11 Individual Settlement Amounts have been considered, calculated, and accounted for, and all of the
12 remaining monetary obligations have been calculated and accounted for.

13 Within one hundred twenty (120) days of mailing the Individual Settlement Amounts to Class
14 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
15 declaration of payment. In the event that any Class Participant is deceased, payment shall be made
16 payable to the estate of that Class Member and delivered to the executor or administrator of that estate,
17 unless the Settlement Administrator has received an affidavit or declaration pursuant to California
18 Probate Code section 13101, in which case payment shall be made to the affiant(s) or declarant(s).

19 **8.8. NON-CASHED SETTLEMENT CHECKS**

20 Any funds associated with checks that have not been cashed within one hundred eighty (180)
21 days, will become void and the Individual Settlement Amount associated with the uncashed check will
22 be remitted pursuant to Code of Civil Procedure section 384 to the California State Controller for
23 deposit in the Unclaimed Property Fund in the name of the individual whose check was uncashed. For
24 the purposes of determining whether Defendants have met their financial obligation to pay the
25 Individual Settlement Payment, Defendants will be deemed to have fulfilled their obligation upon the
26 mailing of the check to the Class Member, regardless of whether such Class Member subsequently
27 negotiates the check.
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**8.9. DISPUTES REGARDING CLASS MEMBER BI-WEEKLY PAY PERIODS DATA OR
PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

Class Member Bi-weekly pay periods and the corresponding Individual Settlement Amount shall be calculated using the employment and payroll records of Defendants, which presumptively shall be deemed to be full, complete, and accurate for purposes of this Settlement Agreement. To overcome that presumption, any Class Member objecting to the accuracy of the number of Bi-weekly pay periods or amount of the Individual Settlement Amount must submit documentary evidence, such as pay stubs or other written employment records, to the Settlement Administrator. Each Class Member may dispute the number of Bi-weekly pay periods or their estimated Individual Settlement Amount contained on their Class Notice ("Bi-weekly pay periods Dispute"). Any such Bi-weekly pay periods Dispute must be mailed or faxed to the Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the Response Deadline. The Settlement Administrator shall immediately provide copies of all disputes to counsel for Defendants, shall inform Class Counsel of the dispute without disclosing the identity of the Class Member making the dispute, and shall immediately attempt to resolve all such disputes directly with relevant Class Members with the assistance of Defendants, Defense Counsel, and Class Counsel. If the dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its final, non-appealable decision. The Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective Date. If, however, a dispute arises or is not resolved until after the Settlement Amount has been distributed, the initial calculation shall stand (as Defendants shall be under no obligation to pay any amounts in excess of the Gross Settlement Amount under this Settlement Agreement).

9. NULLIFICATION OF THIS SETTLEMENT AGREEMENT

9.1. NON-APPROVAL OF THIS SETTLEMENT AGREEMENT

The Class Settlement and conditional class certification shall be considered null and void, and neither the Class Settlement, conditional class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement had been neither entered into nor filed with the Court, if any of the following occur: (a) the Court should for any reason fail to approve this

1 Settlement Agreement in the form agreed to by the Parties; (b) the Court should for any reason fail to
2 enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment
3 is reversed, modified, or declared or rendered void. Notwithstanding the foregoing, the Parties may
4 attempt in good faith to cure any perceived defects in this Settlement Agreement to facilitate approval.

5 **9.2. PARTIES' RIGHTS TO VOID CLASS SETTLEMENT; ESCALATOR PROVISION**

6 If 10% or more members of the Settlement Class timely submit Opt Out requests, Defendants
7 shall have the right (but not the obligation) to void this Settlement Agreement. If the number of bi-
8 weekly pay periods in the Class Settlement Period is more than 10% greater than as represented and
9 estimated by Defendants, then the Gross Settlement Amount shall be increased proportionally for each
10 additional bi-weekly pay period above the 10% threshold. The estimated bi-weekly pay periods for
11 the Class Settlement Period is 2,250, so the threshold is 2,475 bi-weekly periods. As such, if the final
12 number of bi-weekly periods worked were 2,500, the Gross Settlement Amount would increase by
13 1.0101% ($25 \div 2,475 = 1.0101\%$).

14 **9.3. INVALIDATION**

15 Invalidation of any material portion of this Settlement Agreement shall invalidate the Class
16 Settlement in its entirety, unless the Parties subsequently agree in writing that the remaining provisions
17 of the Class Settlement are to remain in full force and effect.

18 **9.4. STAY ON APPEAL**

19 In the event of a timely appeal from the approval of the Class Settlement and judgment, the
20 judgment shall be stayed, and Defendants shall not be obligated to fund the Gross Settlement Amount
21 or take any other actions required by this Settlement Agreement until all appeal rights have been
22 exhausted by operation of law.

23 **10. MOTIONS FOR COURT APPROVAL**

24 **10.1. PRELIMINARY APPROVAL**

25 As soon as practicable after execution of this Settlement Agreement, Class Counsel will submit
26 this Settlement Agreement to the Court along with a Motion for Preliminary Approval of the Class
27 Settlement. Each party shall cooperate to present the Class Settlement to the Court for preliminary
28 approval in a timely fashion.

1 **10.2. FINAL APPROVAL**

2 The Final Approval and Fairness Hearing shall be held before the Court. At the Final Approval
3 and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order certifying the
4 Settlement Class for settlement purposes only and approving the Class Settlement as being fair,
5 reasonable, and adequate to the Class Participants within the meaning of California Rules of Court,
6 Rule 3.769, subdivisions (c), (d) and (e), and for the entry of a final judgment of the Action consistent
7 with the terms of the Class Settlement and rule 3.769, subdivision (h), of the California Rules of Court.
8 Class Counsel and Defense Counsel shall submit to the Court such pleadings and/or evidence as may
9 be required for the Court's determination.

10 **11. RELEASES AND WAIVERS**

11 **11.1. RELEASE OF CLAIMS BY THE SETTLEMENT CLASS AND PLAINTIFF**

12 Upon the Effective Date, the Releasing Parties, including Plaintiff, shall be deemed to each
13 release the Released Parties, and each of them, of and from any and all Released Claims arising during
14 the Class Period. It is the desire of the Parties and the Releasing Parties to fully, finally, and forever
15 settle, compromise, and discharge the Released Claims. Each of the Releasing Parties, including each
16 Class Participant, will be bound by the release of Released Claims as a result of the Class Settlement
17 and to the terms of the final judgment and the satisfaction of such judgment.

18 Class Participants will be deemed to have acknowledged and agreed that their claims for wages
19 and/or penalties in the Action are disputed, and that their Individual Settlement Amount constitutes
20 payment of all sums allegedly due to them. Class Participants will be deemed to have acknowledged
21 and agreed that California Labor Code section 206.5 is not applicable to the Individual Settlement
22 Amount. That section provides in pertinent part as follows:
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24
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1 "An employer shall not require the execution of a release of a claim or right on account
2 of wages due, or to become due, or made as an advance on wages to be earned, unless
3 payment of those wages has been made."

4 **11.2. CIRCULAR 230 DISCLAIMER**

5 Each party to this Settlement Agreement (for purposes of this section, the "Acknowledging
6 Party"; and each party to this Agreement other than the Acknowledging Party, an "Other Party")
7 acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written
8 communication or disclosure between or among the parties or their attorneys and other advisers, is or
9 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
10 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
11 C.F.R. Part 10); (2) the Acknowledging Party (a) has relied exclusively upon her or its own
12 independent legal and tax advisers for advice (including tax advice) in connection with this Settlement
13 Agreement, (b) has not entered into this Settlement Agreement based upon the recommendation of any
14 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
15 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty that
16 may be imposed on the Acknowledging Party; and (3) no attorney or adviser to any other party has
17 imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
18 (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party
19 of the tax treatment or tax structure of any transaction, including any transaction contemplated by this
20 Settlement Agreement.

21 **12. DUTIES OF THE PARTIES**

22 **12.1. MUTUAL FULL COOPERATION**

23 The Parties agree to cooperate fully with one another to accomplish and implement the terms
24 of this Settlement Agreement. Such cooperation shall include, but not be limited to, execution of such
25 other documents and the taking of such other actions as may reasonably be necessary to fulfill the terms
26 of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated
27 by this Settlement Agreement and any other efforts that may become necessary by court order or
28

1 otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
2 after execution of this Settlement Agreement, Class Counsel, with the cooperation of Defendants and
3 Defense Counsel, shall take all necessary and reasonable steps to secure the Court's final approval of
4 this Settlement Agreement.

5 **12.2. DUTY TO SUPPORT AND DEFEND THE CLASS SETTLEMENT**

6 The Parties agree to abide by all of the terms of this Settlement Agreement in good faith and to
7 support the Class Settlement fully and to use their best efforts to defend this Class Settlement from any
8 legal challenge, whether by appeal or collateral attack.

9 **12.3. DUTIES PRIOR TO COURT APPROVAL**

10 Class Counsel shall promptly submit this Settlement Agreement to the Court for preliminary
11 approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly
12 upon execution of this Settlement Agreement, Class Counsel shall apply to the Court for the entry of a
13 preliminary order scheduling a hearing on the question of whether the proposed Class Settlement
14 should be approved as fair, reasonable, and adequate as to the Class Members, approving as to form
15 and content the proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**,
16 respectively, and directing the mailing of the Class Notice to Class Members. While Defendants can
17 reserve their right to object to facts or assertions made in the moving papers, Defense Counsel shall
18 file a notice of non-opposition to the granting of the motion for preliminary approval or join in the
19 motion.

20 **13. MISCELLANEOUS PROVISIONS**

21 **13.1. VOIDING THIS SETTLEMENT AGREEMENT**

22 Pending Court approval and other than as provided herein, if any of the conditions set forth in
23 this Settlement Agreement are not met and satisfied, this Settlement Agreement may, at the option of
24 either Plaintiff or Defendants, be ineffective, void, and of no further force and effect, and may not be
25 used or be admissible in any subsequent proceeding, either in this Court or in any other court or forum.
26 If either Party decides to void the Settlement Agreement, then the Settlement Agreement and
27 conditional class certification shall be considered void, and neither the Settlement Agreement,
28 conditional class certification, nor any of the related negotiations or proceedings, shall be of any force

1 or effect, and the Parties shall stand in the same position, without prejudice, as if this Settlement
2 Agreement had been neither entered into nor filed with the Court. Should any Party choose to void the
3 Class Settlement under this subsection, such Party shall be responsible for all Settlement Administrator
4 fees and costs actually incurred.

5 **13.2. DIFFERENT FACTS**

6 The Parties acknowledge that, except for matters expressly represented herein, the facts in
7 relation to the dispute and all claims released by the terms of this Settlement Agreement may turn out
8 to be different from the facts now known by each party and/or its counsel, or believed by such Party or
9 counsel to be true, and each Party therefore expressly assumes the risk of the existence of different or
10 presently unknown facts, and agrees that this Settlement Agreement shall be in all respects effective
11 and binding despite such difference.

12 **13.3. NO PRIOR ASSIGNMENTS**

13 The Parties represent, covenant, and warrant that they have not directly or indirectly assigned,
14 transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any
15 portion of any liability, claim, demand, action, cause of action, or right herein released and discharged
16 except as set forth herein.

17 **13.4. NON-ADMISSION**

18 Nothing in this Settlement Agreement shall be construed as or deemed to be an admission by
19 any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or any other
20 person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing
21 toward each other or any other person. Each of the Parties has entered into this Settlement Agreement
22 with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses,
23 and contingencies. Nothing herein shall constitute any admission by Defendants of wrongdoing or
24 liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
25 admission by Defendants regarding the merits of the Claims in this Action, including but not limited
26 to claims for unpaid wages or violations under California or federal law. Nothing herein shall constitute
27 an admission by Defendants that the Action was properly brought as a class or representative action
28 other than for settlement purposes. To the contrary, Defendants have denied and continue to deny each

1 and every material factual allegation and all Claims. To this end, the Class Settlement of the Action,
2 the negotiation and execution of this Settlement Agreement, and all acts performed or documents
3 executed pursuant to or in furtherance of this Settlement Agreement or the Class Settlement are not,
4 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
5 liability on the part of Defendants or of the truth of any of the factual allegations in the Complaint in
6 the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence
7 of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding
8 in any court, administrative agency, or other tribunal.

9 The Parties expressly note and agree that class certification for purposes of settlement is not an
10 admission that class certification is proper under Section 382 of the Code of Civil Procedure or any
11 other standard from this or any jurisdiction, and in fact Defendants (and all other Released Parties) take
12 the position that no class action settlement can be maintained either in court or in arbitration absent the
13 limited, revocable waiver herein for the particular named plaintiff for the purposes of this settlement
14 only. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part,
15 this conditional agreement to class certification will be inadmissible and will have no effect in this
16 matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the
17 respective positions they held prior to entering into the Settlement Agreement.

18 Indeed, the Parties expressly recognize that the Parties' pre-dispute agreements to submit to
19 binding arbitration generally prohibit class-wide or other representative actions and/or relief. However,
20 in the interest of efficiency—and solely for the purpose of and expressly conditioned upon obtaining
21 all required judicial and administrative approvals required to fully implement this Settlement
22 Agreement—Employee and Defendants (as well as any affected Released Party) have each elected to
23 agree to a limited waiver on the prohibition against class and other representative actions. Should final
24 approval not be ordered and/or confirmed by the Superior Court consistent with this Settlement
25 Agreement—or should final approval be ordered on terms that vary from those set forth in this
26 Settlement Agreement—then neither this Settlement Agreement, the limited waiver, nor any of the
27 facts or circumstances related hereto can or should be interpreted as supporting any right by any party
28 or any other putative class member to insist upon class-wide or other representative relief being

1 available under the Parties' arbitration agreements. Moreover, any individual(s) who elects to exclude
2 himself or herself from the Settlement Agreement and the terms thereof (through opt-out or otherwise)
3 will not be able to benefit from any of the terms of the class settlement and shall not have the benefit
4 of the limited waiver on class and/or representative claims including, but expressly not limited to the
5 Parties' waiver of any claims or defenses, including, but expressly not limited to defenses against class-
6 wide and other representative relief in arbitration, statute of limitations defenses, and defenses that
7 would preclude the certification or establishment of any class of aggrieved or similarly situated
8 claimants. The Parties expressly recognize that there has been no finding in this action that class-wide
9 or other representative relief is justified under the facts and circumstances relating to the allegations
10 raised by Plaintiffs in their actions. Indeed, Defendants contend there is sharp dispute between the
11 Parties as to whether class-wide or other representative relief would be available or appropriate, both
12 because of the existence of arbitration obligations between the Parties and between all other members
13 of the Settlement Class (including subclasses) and any Released Parties (which agreements do not
14 provide for class-wide or other representative relief), and because the facts and circumstances relating
15 to the allegations raised by Employee do not support class-wide relief under the California Code of
16 Civil Procedure, because of a questions of commonality, typicality, etc. No member of the Settlement
17 Class (including any who choose to exclude himself or herself from the Settlement Class) may rely on
18 this Settlement Agreement or the terms thereof as they may be applied to other members of the
19 Settlement Class as a basis for seeking to bring any existing or future class allegation or other claim.

20 **13.5. NON-EVIDENTIARY USE**

21 Neither this Agreement nor any of its terms, nor any statements or conduct in the negotiation
22 or drafting of it, shall be offered or used as evidence by Plaintiff, any Class Member (including any
23 individual who requested to be excluded from the Settlement Class), Defendants, or its, her, his, or
24 their respective counsel, in the Action, except as is reasonably necessary to effectuate the Settlement
25 Agreement's purpose and terms. This Settlement Agreement may, however, be used by Defendants
26 and the Released Parties to prove or defend against any claim released herein by any Class Member in
27 any judicial, quasi-judicial, administrative, or governmental proceeding.
28

1 **13.6. MEDIA OR PRESS**

2 Plaintiff and Defendants, and their respective counsel, recognize, accept, and agree that the
3 Parties to this Settlement Agreement desire that the terms of this Settlement Agreement, the fact of the
4 Class Settlement embodied in this Settlement Agreement, the disposition of the Action, the Action, and
5 all matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
6 obtained during the course of the Action, shall not be discussed with or presented to the media or press.

7 **13.7. NON-RETALIATION**

8 Defendants understands and acknowledges that they have a legal obligation to not retaliate
9 against any Class Member who elects to participate in the Class Settlement or elects to Opt Out of the
10 Class Settlement. Defendants will refer any inquiries regarding this Class Settlement to the Settlement
11 Administrator or Class Counsel and will not discourage Class Members who are employees, directly
12 or indirectly, from making claims, opting out, or objecting to the Class Settlement. None of the Parties,
13 or their respective attorneys or agents, shall solicit or encourage any Class Members, directly or
14 indirectly, to Opt Out of the Class Settlement.

15 **13.8. CONSTRUCTION**

16 The Parties agree that the terms and conditions of this Settlement Agreement are the result of
17 lengthy, intensive, arms-length, non-collusive negotiations between the Parties and that this Settlement
18 Agreement is not to be construed in favor of or against any party by reason of the extent to which any
19 party or its counsel participated in the drafting of this Settlement Agreement. If any of the dates in this
20 Settlement Agreement fall on a weekend, bank or court holiday, the time to act shall be extended to the
21 next business day.

22 **13.9. GOVERNING LAW**

23 This Settlement Agreement is intended to and shall be governed by the laws of the State of
24 California, without regard to conflict of law principles, in all respects, including execution,
25 interpretation, performance, and enforcement.

26 **13.10. NOTICES**

27 Except for Class Member notices required to be made by the Settlement Administrator, all
28 notices or other communications required or permitted under this Settlement Agreement shall be in

1 writing and shall be sufficiently given if delivered in person to the party or their counsel by U.S.
2 certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the address of the
3 party appearing in this Settlement Agreement.

4 **13.11. CAPTIONS AND INTERPRETATIONS**

5 Section titles or captions contained herein are inserted as a matter of convenience and for
6 reference only and in no way define, limit, extend, or describe the scope of this Settlement Agreement
7 or any provision thereof.

8 **13.12. MODIFICATION**

9 This Settlement Agreement may not be changed, altered, or modified, except in writing signed
10 by the Parties or the Parties' counsel on their behalf. If preliminary or final approval of this Settlement
11 Agreement has been granted by the Court, then any such amendments or modifications to this
12 Settlement Agreement shall be approved by the Court. This Settlement Agreement may not be
13 discharged except by performance in accordance with its terms or by a writing signed by the Parties.

14 **13.13. INTEGRATION CLAUSE**

15 This Settlement Agreement contains the entire agreement between the Parties relating to the
16 Class Settlement of the Action and the transactions contemplated thereby, and all prior or
17 contemporaneous agreements, understandings, representations, and statements, whether oral or written,
18 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this
19 Settlement Agreement may be waived except in writing as provided above.

20 **13.14. SUCCESSORS AND ASSIGNS**

21 This Settlement Agreement shall be binding on and inure to the benefit of the Parties and Class
22 Members (excluding only persons who timely Opt Out) and their respective present and former heirs,
23 trustees, executors, administrators, representatives, officers, directors, shareholders, agents, employees,
24 insurers, attorneys, accountants, auditors, advisors, consultants, pension plans, welfare benefit plans,
25 fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors,
26 successors, and assigns.

1 **13.15. CORPORATE SIGNATORIES**

2 Any person executing this Settlement Agreement or any such related document on behalf of a
3 corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all
4 Parties hereto, that such person has been duly authorized by such corporation or partnership to execute
5 this Settlement Agreement or any such related document.

6 **13.16. EXECUTION IN COUNTERPARTS**

7 This Settlement Agreement shall become effective upon its execution by all of the undersigned.
8 The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall
9 have the same force and effect as if all Settling Parties had signed the same instrument.

10 **13.17. ATTORNEY FEES, COSTS, AND EXPENSES**

11 Except as otherwise specifically provided for herein, each party shall bear her or its own
12 attorney fees, costs, and expenses, taxable or otherwise, incurred by them in or arising out of the Action
13 and shall not seek reimbursement thereof from any other party to this Settlement Agreement.

14 **13.18. ACTION TO ENFORCE AGREEMENT**

15 In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be
16 entitled to recover her or its attorney fees and costs.

17 **14. EXECUTION**

18 The Parties and their counsel have executed this Settlement Agreement on the date below their
19 signatures or the signature of their representatives. The date of this Settlement Agreement shall be the
20 date of the latest signature.

21 **APPROVAL AND EXECUTION BY PARTIES**

22 **CLASS REPRESENTATIVE:**

23 Dated: 3/11/2022

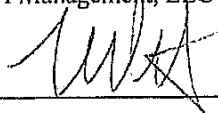
DocuSigned by:
Robert D. Wilson
1241DF6005844DF...

Robert D. Wilson
Plaintiff and Class Representative

1 **DEFENDANTS:**

2
3 Dated: MARCH 17, 2022

OCH Powersports, LP, dba Orange County
Harley Davidson
OCH Management, LLC



By: MARK SMITH

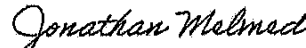
Title: MANAGER

9
10 **APPROVED AS TO FORM BY COUNSEL**

11 **CLASS COUNSEL:**

12 Dated: March 11, 2022

Melmed Law Group P.C.



Jonathan Melmed
Attorneys for Plaintiff

17 **DEFENDANTS' COUNSEL:**

18
19 Dated: March 17, 2022

Fine, Boggs & Perlins LLP



David J. Reese
Attorneys for Defendants

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6 Fax: (310) 862-6851

7 Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF ORANGE**

10 ROBERT D. WILSON, an individual, on behalf
11 of himself, the State of California, as a private
attorney general, and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 v.

15 OCH POWERSPORTS, LP, DBA ORANGE
16 COUNTY HARLEY DAVIDSON, a Texas
limited partnership; OCH MANAGEMENT,
17 LLC, a business of unknown formation; and
DOES 1 TO 50,

18 Defendants.
19

Case Number: 30-2020-01140921-CU-OE-CXC

**AMENDMENT TO SETTLEMENT
AGREEMENT AND RELEASE OF CLASS
ACTION**

1 This shall serve as an amendment to the **Settlement Agreement and Release of Class Action**
2 (“Settlement Agreement”) entered into on March 17, 2022 between Plaintiff Robert D. Wilson
3 (“Plaintiff”), on the one hand, individually, as a representative of the Settlement Class and as a
4 representative of the State of California and Aggrieved Employees, as defined below, by and through
5 their counsel of record Melmed Law Group, P.C. (“Class Counsel”), and Defendants OCH
6 Powersports, LP, dba Orange County Harley Davidson and OCH Management, LLC (“Defendants”)
7 (Plaintiff and Defendants are collectively referred to as “the Parties”) on the other hand, by and through
8 their counsel of record, Fine, Boggs & Perkins LLP. All other settlement terms remain the same.

9 The following provisions of the Settlement Agreement are hereby amended as follows:

10 **1.34 RELEASED CLASS CLAIMS**

11 “Released Class Claims” shall mean those claims arising out of or directly related to the factual
12 allegations set forth in the Complaint and/or PAGA notice to the LWDA, which arose during the Class
13 Period, including claims for: (1) failure to pay minimum wage for all hours worked in violation of
14 Labor Code sections 1194 and 1194.2, and the Applicable Wage Orders; (2) failure to pay proper
15 overtime wages in violation of Labor Code sections 510, 1197, and 1198, and the Applicable Wage
16 Orders; (3) failure to pay timely wages during employment in violation of Labor Code sections 204,
17 210; (4) failure to pay all wages due and owing at separation in violation of Labor Code sections 201,
18 202, and 203; (5) failure to reimburse business expenses in violation of Labor Code sections 2802 and
19 2804; (6) failure to provide complete and accurate wage statements in violation of Labor Code sections
20 226 and 226.3; (7) deceptive, fraudulent, or otherwise unlawful business practices based on the
21 foregoing in violation of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210);
22 (8) statutory penalties based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and
23 (9) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.

24 No other claims are released other than those claims specifically plead in the Complaint or
25 otherwise specifically identified herein. This Settlement Agreement will not release any person, party,
26 or entity from claims, if any, by Class Members for workers compensation, unemployment, or disability
27 benefits of any nature. Nor does it release any claims, actions, or causes of action which may be
28 possessed by Class Members under state or federal discrimination statutes, including, without

1 limitation, the California Fair Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh
2 Civil Rights Act (Civ. Code, § 51); the California Constitution; Title VII of the Civil Rights Act of
3 1964 (42 U.S.C. § 2000, et seq.); the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the
4 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their
5 implementing regulations and interpretive guidelines.

6 **1.37 RESPONSE DEADLINE**

7 “Response Deadline” shall mean the date sixty (60) days following the date on which the
8 Settlement Administrator first mails Class Notice to the Class Members and the last day on which Class
9 Members may submit a request for exclusion and/or objection to Class Settlement.

10 **1.41 PAGA RELEASED CLAIMS**

11 “PAGA Released Claims” shall mean any and all claims that are pled in the Action under
12 PAGA, or which could have been pursued in the Action under PAGA, based on the factual allegations
13 in the Action alleged in the Complaint and in the PAGA Notice to the LWDA, including but not limited
14 to: failure to pay minimum wages for all hours worked, failure to pay overtime wages, failure to pay
15 wages timely during employment, failure to pay timely wages at separation, failure to provide accurate
16 and itemized wage statements, failure to reimburse for business expenses, pursuant to Labor Code
17 sections 01-203, 204, 210, 226, 226.3, 227.3, 510, 1194, 1194.2, 1197, 1197.1, 1198, 2802.

18 **7.2 NOTICE TO CLASS MEMBERS**

19 Notice shall be provided to Class Members in the following manner: Within fourteen (14) days
20 after the Preliminary Approval Date, Defendants shall provide the Settlement Administrator with an
21 updated list of Class Members and members of the PAGA Settlement Class containing names, social
22 security numbers, dates of employment, last-known addresses, and phone numbers (the “Database”).
23 The Database shall be marked “Confidential – Settlement Administrator’s Eyes Only.” Class Counsel
24 shall not receive a copy of this list.

25 Within twenty-eight (28) days following the Preliminary Approval Date, the Settlement
26 Administrator shall determine the number of weeks worked by each Class Member, populate the data
27 for each Class Member accordingly, and send each Class Member the Class Notice via first-class,
28 United States mail. The Class Notice shall also contain an easily-understood statement alerting the

1 Class Members that, unless they elect to Opt Out of the Class Settlement, the Class Member is releasing
2 and waiving all Released Claims against the Released Parties.

3 The Class Notice will inform Class Members of their estimated share of the settlement and the
4 number of weeks they worked during the Class Period. Class Members may dispute their work weeks
5 if they believe they worked more weeks in the Class Period than Defendants' records show by
6 submitting information to the Settlement Administrator no later than forty-five (45) days after being
7 mailed the Class Notice and Share Form by the Settlement Administrator, which is the defined
8 Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendants to
9 resolve the dispute in good faith. If Plaintiff and Defendants cannot agree over the work weeks to be
10 credited, the Settlement Administrator shall make a finding based on the information presented by the
11 Class Member and Defendants. The Court shall have the right to review any decision made by the
12 Settlement Administrator.

13 7.3 OPT OUT PROCEDURE

14 Class Members who do not timely Opt Out of the Class Settlement will be deemed to participate
15 in the Class Settlement and shall become Class Participants without having to submit a claim form or
16 take any other action. To Opt Out of the Class Settlement, the Class Member must submit a letter or
17 postcard to the Settlement Administrator by mail or by fax by the Response Deadline. The Opt Out
18 request must state the Class Member's name, address, telephone number, and signature. The Opt Out
19 request should state something to the effect of:

20 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *ROBERT*
21 *D. WILSON V. OCH POWERSPORTS, LP, DBA ORANGE COUNTY HARLEY*
22 *DAVIDSON, ET AL.* LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
23 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
24 MONEY FROM THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT
25 BE RELEASING ANY CLAIMS I MIGHT HAVE."
26

27 Any Opt Out request that is not postmarked by the Response Deadline will be invalid. In the
28 event that, prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as

1 having been undelivered by the United States Postal Service, the Settlement Administrator shall
2 perform a skip trace search and seek an address correction for such Class Members, and a second Class
3 Notice will be sent to any new or different address obtained. Such Class Members shall have an
4 additional fourteen (14) days from the date of the mailing of the second Class Notice in which to Opt
5 Out if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date
6 of the mailing of the second Class Notice.

7 It will be presumed that, if an envelope containing the Class Notice has not been returned within
8 twenty-eight (28) days of the mailing, the Class Member received the Class Notice. At least seven (7)
9 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class
10 Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard
11 to the mailing of the Class Notice and its attempts to locate Class Members. The declaration shall
12 specify the number of Class Members to whom the Class Notice was sent and the number of Class
13 Members to whom the Class Notice was not delivered, as well as information relating to the number
14 of Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

15 If the Settlement Administrator determines that an Opt Out request returned by a Class Member
16 before the Response Deadline is deficient, then the Settlement Administrator shall mail a deficiency
17 letter to that Class Member identifying the problem. If a Class Member submits both a dispute and an
18 Opt Out request, the Settlement Administrator shall make reasonable attempts to clarify as if the Opt
19 Out request were deficient. If the Class Member fails to cure the deficiency, the Opt Out request shall
20 be disregarded and the claim will be paid, and the Class Member will become bound by the judgment.

21 Class Participants will be bound by the Release of Released Claims set forth in the definition
22 of "Released Claims" provided in this Settlement Agreement.

23 A request to Opt Out of the Class Settlement shall *not* serve to exclude the Class Member from
24 participation in the PAGA Settlement Class. Opt-Outs shall still be entitled to their share of the PAGA
25 Payment. Class Members who are also members of the PAGA Settlement Class shall have no right or
26 ability to opt out of the portion of this Settlement Agreement releasing PAGA claims.

1 **7.4 OBJECTION PROCEDURE**

2 The Class Notice shall inform the Class Members of their right to object to the Class Settlement.
3 Any Class Member who wishes to object to the Class Settlement may submit a written objection by
4 mail or by fax to the Settlement Administrator no later than the Response Deadline. In the event that,
5 prior to the Response Deadline, any Class Notice mailed to a Class Member is returned as having been
6 undelivered by the United States Postal Service, the Settlement Administrator shall perform a skip trace
7 search and seek an address correction for such Class Members, and a second Class Notice will be sent
8 to any new or different address obtained. Such Class Members shall have an additional fourteen (14)
9 days from the date of the mailing of the second Class Notice in which to submit their written objection
10 if the Response Deadline would have otherwise passed prior to fourteen (14) days from the date of the
11 mailing of the second Class Notice.

12 Only Class Participants may object to the Settlement. The objection can be made in writing or
13 orally, by appearing in person or through counsel, at the Final Approval hearing, and should include
14 the case name and number and must set forth, in clear and concise terms, a statement of the reasons
15 why the objector believes that the Court should find that the proposed Class Settlement is not in the
16 best interest of the Settlement Class and the reasons why the Class Settlement should not be approved.
17 If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through
18 an attorney, they may do so. The Settlement Administrator will promptly serve copies of any objection
19 or notice of intention to appear on Class Counsel and Defense Counsel. Class Members wishing to
20 make an objection may appear at the Final Approval and Fairness Hearing, either in person or through
21 a lawyer retained at their own expense.

22 **8.9 DISPUTES REGARDING CLASS MEMBER BI-WEEKLY PAY PERIODS**
23 **DATA OR PAYMENT OF INDIVIDUAL SETTLEMENT SHARES**

24 Class Member Bi-weekly pay periods and the corresponding Individual Settlement Amount
25 shall be calculated using the employment and payroll records of Defendants. Any Class Member
26 objecting to the accuracy of the number of Bi-weekly pay periods or amount of the Individual
27 Settlement Amount must submit documentary evidence, such as pay stubs or other written employment
28 records, to the Settlement Administrator. Each Class Member may dispute the number of Bi-weekly

1 pay periods or their estimated Individual Settlement Amount contained on their Class Notice ("Bi-
2 weekly pay periods Dispute"). Any such Bi-weekly pay periods Dispute must be mailed or faxed to
3 the Settlement Administrator by the Class Member, postmarked or fax-stamped on or before the
4 Response Deadline. In the event that, prior to the Response Deadline, any Class Notice mailed to a
5 Class Member is returned as having been undelivered by the United States Postal Service, the
6 Settlement Administrator shall perform a skip trace search and seek an address correction for such
7 Class Members, and a second Class Notice will be sent to any new or different address obtained. Such
8 Class Members shall have an additional fourteen (14) days from the date of the mailing of the second
9 Class Notice in which to submit their such Bi-weekly pay periods Dispute if the Response Deadline
10 would have otherwise passed prior to fourteen (14) days from the date of the mailing of the second
11 Class Notice.

12 The Settlement Administrator shall immediately provide copies of all disputes to counsel for
13 Defendants, shall inform Class Counsel of the dispute without disclosing the identity of the Class
14 Member making the dispute, and shall immediately attempt to resolve all such disputes directly with
15 relevant Class Members with the assistance of Defendants, Defense Counsel, and Class Counsel. If the
16 dispute cannot be resolved, it shall be submitted to the Settlement Administrator for its decision. The
17 Settlement Administrator shall use its best efforts to resolve all such disputes prior to the Effective
18 Date. Plaintiff shall file with the Court all disputes submitted by the Class Members, and all evidence
19 provided by class members in connection with any dispute, and the findings of the Settlement
20 Administrator. The Court shall have the right to review any decision made by the Settlement
21 Administrator.

22 **13.18 ACTION TO ENFORCE AGREEMENT**

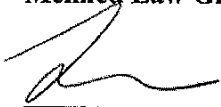
23 In any suit or court action between Plaintiff and Defendant to enforce the terms of this
24 Agreement, the prevailing party shall be entitled to recover her or its attorney fees and costs.
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CLASS COUNSEL:

Dated: October 17, 2022

Melmed Law Group P.C.

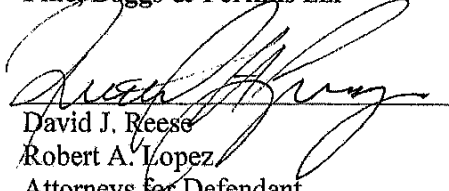


Jonathan Melmed
Attorneys for Plaintiff

DEFENDANTS' COUNSEL:

Dated: Oct. 14, 2022

Fine, Boggs & Perkins LLP



David J. Reese
Robert A. Lopez
Attorneys for Defendant

EXHIBIT B

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ROBERT D. WILSON, an individual, on behalf of
himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

OCH POWERSPORTS, LP, DBA ORANGE
COUNTY HARLEY DAVIDSON, a Texas
limited partnership; OCH MANAGEMENT, LLC,
a business of unknown formation; and DOES 1
TO 50,

Defendants.

Case Number: 30-2020-01140921-CU-OE-
CXC

**Notice of Proposed Class and PAGA
Representative Action Settlement**

A court authorized this notice. This is not a solicitation from a lawyer.

1 **NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION**

2 **SETTLEMENT**

3 *You may be eligible to receive a settlement payment. Please read this notice carefully.*

4 A proposed class action settlement agreement (the "Settlement") has been reached between:
5 (1) Plaintiff Robert D. Wilson ("Plaintiff"), individually and in his representative capacity on behalf of
6 a group of prospective class members defined below, and as a private attorney general on behalf of the
7 State of California; and (2) Defendants OCH Powersports, LP, dba Orange County Harley Davidson
8 and OCH Management, LLC (collectively, "Defendants"). The Settlement resolves disputed claims
9 against Defendants arising out of their compensation practices during the period from December 16,
10 2017, through September 30, 2021 (the "Class Period") as applied to all individuals who are or were
11 employed by Defendant(s) as non-exempt employees in California during the the Class Period ("Class
12 Members").

13 The Court has granted preliminary approval of the Settlement and ordered this notice to be sent
14 to you because you may be entitled to money under the Settlement and because the Settlement affects
15 your legal rights.

16 **NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE**
17 **SETTLEMENT:** If you are a Class Member (as defined above) and received this notice, you are
18 automatically included in the Settlement and do not need to take any further action to receive a
19 payment. If you accept your settlement amount, you will release the claims described below.

20 **1. DESCRIPTION OF THE LAWSUIT**

21 On May 26, 2020, Plaintiff, individually and in his representative capacity on behalf of the
22 Class Members, and as a private attorney general on behalf of the State of California, filed a complaint
23 against Defendants in the Superior Court of California for the County of Orange in the matter of *Robert*
24 *D. Wilson v. OCH Powersports, LP, dba Orange County Harley Davidson, et al.*, case number **30-**
25 **2020-01140921-CU-OE-CXC** (the "Action"). The Action sought recovery for Defendants' alleged:
26 (1) failure to pay minimum wage for all hours worked; (2) failure to pay proper overtime wages;
27 (3) failure to pay timely wages during employment; (4) failure to pay all wages due and owing at
28 separation; (5) failure to reimburse business expenses; (6) failure to provide complete and accurate

1 wage statements; (7) failure to pay accrued vacation time; (8) deceptive, fraudulent, or otherwise
2 unlawful business practices based on the foregoing in violation of California's Unfair Competition
3 Law; and (9) statutory penalties based on the foregoing pursuant to the California Labor Code Private
4 Attorneys General Act of 2004 ("PAGA").

5 **Defendants deny all liability, deny all allegations in the Action, and have raised various**
6 **defenses to the claims.** Defendants assert that they fully complied with all applicable wage and hour
7 laws, and contend that civil penalties under PAGA are not warranted. Defendants also deny that the
8 Action is suitable for class certification. Defendants have entered into the Settlement solely for
9 purposes of resolving this dispute to avoid costly, disruptive, and time-consuming litigation and do not
10 admit to any wrongdoing or liability.

11 The Court has not ruled on the merits in the Action. By approving the Settlement and issuing
12 this notice, the Court is *not* suggesting which side would win or lose the case if it went to trial or
13 whether the claims are suitable for class certification. To avoid the additional expense, inconvenience,
14 and risk of continued litigation, however, Plaintiff and Defendants (the "Parties") have concluded that
15 it is in their respective best interests and the interests of the Class Members to settle the Action on the
16 terms summarized in this notice. The Settlement was reached after Defendants provided extensive
17 information and documents to Plaintiff's counsel, and after lengthy arms-length non-collusive
18 negotiations between the Parties, including mediation with an experienced and well-respected mediator
19 in California. In these negotiations, both sides recognized the substantial risk of the Court deciding
20 against them at trial and determined that the Settlement was a fair, reasonable, and adequate way to
21 resolve the disputed claims.

22 Plaintiff and Plaintiff's counsel—Jonathan Melmed and Laura Supanich of Melmed Law Group
23 P.C. ("Class Counsel")—support the Settlement. Among the reasons for support are the defenses to
24 liability potentially available to Defendants, the risk of denial of class certification, the inherent risk of
25 trial on the merits, and the delays and uncertainties associated with litigation. Plaintiff and Class
26 Counsel believe that the settlement described in this notice is fair, adequate, reasonable, and in the best
27 interests of Plaintiff and the Class Members.
28

1 Under the Settlement, the following settlement class will be certified under California law: *all*
2 *individuals who are or were employed by Defendant(s) as non-exempt employees in California during*
3 *the the Class Period.* The “Class Period” is defined as the period from December 16, 2017, through
4 September 30, 2021. The Settlement provides for a gross settlement amount of \$175,000.00, a share
5 of which is to be distributed to the Class Members based on the pro rata number of weeks worked by
6 the Class Members during the Class Period as a proportion of all weeks worked by all Class Members.
7 In exchange for their share of the settlement amount, all participating Class Members will be deemed
8 to have released Defendants from liability on the terms described in this notice.

9 On [date of preliminary approval], the Court preliminarily approved the Settlement and
10 conditionally certified the settlement class. This notice is being sent to you because Defendants’ records
11 indicate that you worked for Defendants during the Class Period and that you meet the definition
12 required to be treated as a Class Member.

13 **2. IF YOU ARE STILL EMPLOYED BY DEFENDANTS, THIS SETTLEMENT WILL**
14 **NOT AFFECT YOUR EMPLOYMENT.**

15 California law strictly prohibits retaliation. Further, Defendants are prohibited by law from
16 taking any adverse action against or otherwise target, retaliate, or discriminate against any Class
17 Member because of the Class Member's participation or decision not to participate in the Settlement.
18 In this case, the Defendants are no longer in operation and have no existing employees.

19 **3. TERMS OF THE SETTLEMENT**

20 Defendants have agreed to pay \$175,000.00 (the “Gross Settlement Amount”) to resolve the
21 claims in the Action. The Parties agreed to the following payments from the Gross Settlement Amount:

- 22 1. **Settlement Administration Costs.** The Court has approved ILYM Group, Inc. to act
23 as the “Settlement Administrator,” who is sending this notice to you and will perform
24 many other duties relating to the Settlement. Under the Settlement, up to \$12,000.00
25 will be paid from the Gross Settlement Amount to pay the Settlement Administration
26 Costs.
- 27 2. **Attorneys’ Fees and Expenses.** Class Counsel have been prosecuting the Action on
28 behalf of the Class Members on a contingency fee basis (that is, without being paid any

1 money to date) and have been paying all litigation costs and expenses. To date, the
2 Parties have aggressively litigated many aspects of the case including investigation,
3 settlement efforts, and a full-day mediation session. The Court will determine the actual
4 amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross
5 Settlement Amount. Class Members are not personally responsible for any of Class
6 Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of one-third of
7 the Gross Settlement Amount (i.e., \$58,333.33) as reasonable compensation for the
8 work Class Counsel performed and will continue to perform in the Action. Class
9 Counsel also will ask for reimbursement of up to \$11,000.00 for the costs Class Counsel
10 incurred in connection with the Action.

11 3. **Service Payment to Class Representative.** Class Counsel will ask the Court to provide
12 a service payment to Plaintiff in the amount of \$5,000.00 for Robert D. Wilson to
13 compensate him for his efforts on behalf of the Class Members in the Action, including
14 assisting in the investigation and consulting with Class Counsel and providing crucial
15 documents to Class Counsel. Plaintiff also may receive a share of the Settlement as a
16 Class Member.

17 4. **PAGA Payment.** The Parties have agreed on a reasonable sum to be paid in settlement
18 of the PAGA claims included in the Action, which is \$20,000.00. The PAGA Payment
19 is to be approved by the Court pursuant to Labor Code section 2699 and is to be
20 distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and
21 twenty-five percent (25%) (i.e., \$5,000.00) to the individuals who come within the
22 definition of a PAGA Settlement Class member for the purposes of the Settlement (i.e.,
23 all individuals who are or were employed by Defendants as non-exempt employees in
24 California during the PAGA Period). The "PAGA Period" is defined for these purposes
25 to mean the period from March 17, 2019, through September 30, 2021.

26 After deducting the amounts above, the balance of the settlement amount will form the "Net
27 Settlement Amount" for distribution to the Class Members.
28

1 **4. DISTRIBUTION OF THE SETTLEMENT TO THE CLASS MEMBERS**

2 Each eligible Class Member who does not request exclusion from the Settlement will be deemed
3 a “Class Participant” and will receive a share from the Net Settlement Amount which will be distributed
4 pro rata based on the proportional number of weeks worked by each Class Member during the Class
5 Period (the “Individual Settlement Amount”). If any Class Member requests exclusion from the
6 Settlement, his or her share will be distributed to the remaining Class Participants.

7 Twenty percent (20%) of each Individual Settlement Amount will constitute payment in the
8 form of wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him
9 or her), and Eighty percent (80%) of each Individual Settlement Amount will constitute penalties and
10 interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).

11 Each eligible PAGA Settlement Class member, regardless of whether they request exclusion
12 from the Settlement, will receive a share from the PAGA Payment which will be distributed pro rata
13 based on the proportional number of pay periods worked by each PAGA Settlement Class member
14 during the PAGA Period. One hundred percent (100%) of each PAGA Settlement Class member’s
15 portion of the PAGA Payment will constitute penalties and interest, and each PAGA Settlement Class
16 member will be issued an IRS Form 1099 for such payment to him or her.

17 Defendants, or their proxies, shall take all usual and customary deductions from the Individual
18 Settlement Amount payments that are distributed as wages, including, but not limited to, state and
19 federal tax withholding, disability premiums, and unemployment insurance premiums. There will be
20 no deduction taken from the interest or penalty distribution—it will, however, be reported on IRS Form
21 1099 as income. Class Participants/PAGA Settlement Class members are responsible for the proper
22 income tax treatment of their Individual Settlement Amount and/or portion of the PAGA Payment. The
23 Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice.
24 Accordingly, Class Members should consult with their tax advisors concerning the tax consequences
25 and treatment of payments they receive under the Settlement.

26 The weeks you worked for Defendants during the Class Period will be calculated based on
27 Defendants’ records. If you feel that you were not credited with the correct number of weeks worked
28 during the Class Period, you may submit evidence by fax or by mail to the Settlement Administrator

1 on or before [60 days from the date of mailing/the Response Deadline] with documentation to
2 establish the number of weeks you claim to have actually worked during the Class Period.
3 **Documentation sent to the Settlement Administrator will not be returned or preserved, so do not**
4 **send originals.** The Parties and the Settlement Administrator will promptly evaluate the evidence
5 submitted and discuss in good faith how many work weeks should be credited. The Settlement
6 Administrator will make a finding as to how many work weeks are credited and report the outcome to
7 the Class Participant. The Court shall have the right to review any decision made by the Settlement
8 Administrator.

9 Settlement checks will be mailed to all Class Participants and PAGA Settlement Class members
10 after the Court grants final approval of the Settlement and judgment is entered. The settlement checks
11 will remain valid for one hundred eighty (180) days. Any funds associated with checks that have not
12 been cashed within the validity period will become void and the Individual Settlement Amount and/or
13 PAGA Payment associated with the uncashed check will be remitted pursuant to Code of Civil
14 Procedure section 384 to the California State Controller for deposit in the Unclaimed Property Fund in
15 the name of the individual whose check was uncashed

16 **5. THE RELEASE OF CLAIMS**

17 If the Court approves the Settlement, the Court will enter judgment and the Settlement will bind
18 all Class Participants. The Class Participants will then be barred from bringing any "Released Claims"
19 against the "Released Parties" as those terms are defined below.

20 The "Released Parties" are Defendants OCH Powersports, LP, dba Orange County Harley
21 Davidson and OCH Management, LLC and all of Defendants' subsidiaries, affiliates, shareholders,
22 members, agents, predecessors, successors, and assigns.

23 The "Released Class Claims" are those claims arising out of or directly related to the factual
24 allegations set forth in the Action and/or the PAGA notice to the California Labor & Workforce
25 Development Agency, which arose during the Class Period, including claims for: (1) failure to pay
26 minimum wage for all hours worked in violation of Labor Code sections 1194 and 1194.2, and the
27 Applicable Wage Orders; (2) failure to pay proper overtime wages in violation of Labor Code sections
28 510, 1197, and 1198, and the Applicable Wage Orders; (3) failure to pay timely wages during

1 employment in violation of Labor Code sections 204, 210; (4) failure to pay all wages due and owing
2 at separation in violation of Labor Code sections 201, 202, and 203; (5) failure to reimburse business
3 expenses in violation of Labor Code sections 2802 and 2804; (6) failure to provide complete and
4 accurate wage statements in violation of Labor Code sections 226 and 226.3; (7) deceptive, fraudulent,
5 or otherwise unlawful business practices based on the foregoing in violation of California's Unfair
6 Competition Law (Bus. & Prof. Code, §§ 17200–17210); (8) statutory penalties based on the foregoing
7 pursuant to PAGA (Lab. Code, §§ 2698-2699.6); and (9) all claims for liquidated damages, penalties,
8 interest, fees, costs based on the foregoing. The Release Period is the Class Period. No other claims are
9 released other than those claims specifically plead in the operative complaint in the Action.

10 The Settlement does *not* release Defendants or any person, party, or entity from claims, if any,
11 by Class Members for workers compensation, unemployment, or disability benefits of any nature. Nor
12 does it release any claims, actions, or causes of action which may be possessed by Class Members
13 under state or federal discrimination statutes, including, without limitation, the California Fair
14 Employment and Housing Act (Gov. Code, §§ 12900–12996); the Unruh Civil Rights Act (Civ. Code,
15 § 51); the California Constitution; Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq.);
16 the Americans with Disabilities Act (42 U.S.C. § 12101, et seq.); the Employee Retirement Income
17 Security Act of 1974 (29 U.S.C. § 1001 et seq.); and all of their implementing regulations and
18 interpretive guidelines.

19 Class Members who do not request exclusion from the Settlement will be deemed to have
20 acknowledged and agreed that their claims for wages and penalties in the Action are disputed, and that
21 the Settlement payments constitute payment of all sums allegedly due to them. Class Members will be
22 deemed to have acknowledged and agreed that California Labor Code section 206.5 is not applicable
23 to the Settlement payments. That section provides in pertinent part as follows:

24 “An employer shall not require the execution of a release of a claim or right on account
25 of wages due, or to become due, or made as an advance on wages to be earned, unless
26 payment of those wages has been made.”
27
28

1 “PAGA Released Claims” are any and all claims for civil penalties that are pled in the Action
2 under PAGA, or which could have been pursued in the Action under PAGA, based on the factual
3 allegations in the Action alleged in the Complaint, including but not limited to: failure to pay minimum
4 wages for all hours worked, failure to pay overtime wages, failure to pay wages timely during
5 employment, failure to pay timely wages at separation, failure to provide accurate and itemized wage
6 statements, failure to reimburse for business expenses, pursuant to Labor Code sections 01-203, 204,
7 210, 226, 226.3, 227.3, 510, 1194, 1194.2, 1197, 1197.1, 1198, 2802.

8 The PAGA Settlement Class members shall have no right or ability to opt out of the portion of
9 this Settlement Agreement releasing PAGA Released Claims.

10 **6. YOUR OPTIONS**

11 **6.1. DO NOTHING AND RECEIVE YOUR PORTION OF THE SETTLEMENT**

12 If you do nothing, you will be automatically included as a Class Participant in the Settlement
13 and will receive a settlement payment. You do *not* have to take any further action to receive your
14 settlement payment. It is, however, the responsibility of all Class Members to ensure that the Settlement
15 Administrator has your current address on file, or you may not receive important information or a
16 settlement payment. The estimated amount of your settlement payment if you do nothing is included
17 on the attached *Class Action Settlement Share Form*.

18 **6.2. REQUEST EXCLUSION FROM THE CLASS AND THE SETTLEMENT**

19 If you do *not* wish to take part in the class action portion of the Settlement (the “Class
20 Settlement”), you may exclude yourself (i.e., opt out of the Class Settlement) by sending the Settlement
21 Administrator a letter or card, by mail or by fax, postmarked or fax-stamped no later than [Response
22 Deadline] that specifically requests exclusion from the Class Settlement in this case. The request for
23 exclusion must include your name, address, telephone number, and signature, and it should state:

24 “I wish to be excluded from the settlement class in the case of *Robert D. Wilson v. OCH*
25 *Powersports, LP, dba Orange County Harley Davidson, et al.* I understand that if I ask
26

1 to be excluded from the settlement class, I will not receive any money from the
2 settlement of this lawsuit and will not be releasing any claims I might have.”

3
4 Send the request for exclusion directly to the Settlement Administrator at the following address
5 by no later than [Response Deadline]:

6 ILYM Group, Inc.
7 14751 Plaza Drive, Suite J
8 Tustin, California 92780
9 Fax: (888) 845-6185

10 Any person who submits a timely request for exclusion from the Class Settlement shall, upon
11 receipt, no longer be a Class Member, shall be barred from participating in the Class Settlement, and
12 shall receive no benefits from the class action portion of the Settlement. If you want confirmation of
13 receipt of your request for exclusion, please send it by United States certified mail, return receipt
14 requested, or contact the Settlement Administrator.

15 **Importantly,** Class Members who timely and validly request exclusion from the Class
16 Settlement will *not* be excluded from their share of the PAGA Payment. Requesting exclusion from
17 the Class Settlement applies solely to the Class Members' entitlement to the class action portion of the
18 Settlement and not their entitlement to the PAGA Payment. If you request exclusion from the Class
19 Settlement you will still be entitled to your share, if any, of the PAGA Payment.

19 6.3. OBJECT TO THE SETTLEMENT

20 You have the right to object to the terms of the Settlement if you do not request exclusion. If,
21 however, the Court rejects your objection, you will still be bound by the terms of the Settlement. If you
22 wish to object to the Settlement, or any portion of it, you may either file with the Settlement
23 Administrator, by mail or by fax, a written objection stating your name, address, telephone number,
24 dates of employment with Defendants, the case name and number, and each specific reason in support
25 of your objection, or you may appear at the Final Approval Hearing. Objections in writing must be
26 mailed to the Settlement Administrator at ILYM Group, Inc., 14751 Plaza Drive, Suite J, Tustin,
27 California 92780, or by fax at (888) 845-6185, by no later than [Response Deadline] to be considered.
28

1 **Objections that do not include all required information, or that are not timely submitted, might**
2 **not be considered by the court.**

3 If you choose to object to the Settlement, you may also appear to speak at the final approval
4 and fairness hearing scheduled for [Final Approval Hearing Date], at [Final Approval Hearing Time]
5 in Department [Court Department] of the Superior Court of California for the County of Orange,
6 located at [Court Location]. You have the right to appear either in person or through your own attorney
7 at this hearing.

8 If you object to the Settlement, you will remain a Class Member, and if the Court approves the
9 Settlement, you will receive payment and be bound by the terms of the Settlement in the same way as
10 Class Members who do not object. Any Class Member who does not object in the manner provided
11 above shall have waived any objection to the Settlement, whether by appeal or otherwise.

12 The Court may, at the time of the final approval and fairness hearing, have certain social
13 distancing requirements or procedures for attendance at hearings. If you wish to object to the Settlement
14 by speaking at the final approval and fairness hearing, you may contact Class Counsel, whose
15 information is provided below, for more information about the Court's current social distancing
16 procedures. You may also review the Court's website for the most current information.

17 Please note that you MAY NOT BOTH REQUEST TO EXCLUDE YOURSELF FROM THE
18 SETTLEMENT AND OBJECT TO THE SETTLEMENT. Should you both request to exclude
19 yourself from the settlement, as well as object to the certification of the settlement, the administrator
20 will contact you and attempt to clarify which one option you intend to select. Should the Administrator
21 be unable to clarify which option you wish to choose, you will be excluded from the settlement, and
22 your objection will be disregarded.

23 **7. HOW TO UPDATE OR CHANGE YOUR ADDRESS**

24 If you move after receiving this notice or if it was misaddressed, please contact the Settlement
25 Administrator, ILYM Group, Inc., at (888) 250-6810 or by email at
26 claims@ilymgrouppclassaction.com, as soon as possible. **This is important to ensure that future**
27 **notices and/or the Settlement payment reach you.**
28

1 **8. NOTICE OF FINAL JUDGMENT IF THE SETTLEMENT IS APPROVED**

2 Within ten (10) days after the Court has held a final and fairness approval hearing and entered
3 a final order approving the Settlement, if it chooses to do so, the Settlement Administrator will post a
4 copy of that order and final judgment on its website at the following website address:

5 [Case-Specific Settlement URL (to be added by Settlement Administrator)]

6 **9. IF THE SETTLEMENT IS NOT APPROVED**

7 If the Settlement is not approved by the Court, or if any of its conditions are not satisfied, the
8 Settlement may be voided, in which case no money will be paid, and the case will return to litigation.
9 If that happens, there is no assurance: (1) that the class will be certified by the Court; (2) that any
10 decision at trial would be in favor of Class Members; (3) that a trial decision, if any, would be as
11 favorable to the Class Members as the Settlement; or (4) that any favorable trial decision would be
12 upheld if an appeal was filed.

13 **10. QUESTIONS OR COMMENTS**

14 For more detailed information, you may review all documents filed in this case through the
15 Court's online docket: <https://civilwebshopping.occourts.org/Login.do>. Once you accept the terms for
16 accessing the Court's online docket, you can search for this case by identifying the case number (30-
17 2020-01140921-CU-OE-CXC) and year the case was filed (2020).

18 **PLEASE DO NOT CALL OR CONTACT THE COURT.** If you have any questions about
19 the settlement, you may contact the Settlement Administrator by telephone at (888) 250-6810, by fax
20 at (888) 845-6185, or by e-mail at claims@ilymgroupclassaction.com. You may also contact Class
21 Counsel at the addresses or phone numbers listed below.

22
23 **Lawyers Representing Plaintiff and the Class Members**

24
25 **MELMED LAW GROUP P.C.**

26 Jonathan Melmed

27 jm@melmedlaw.com

Laura Supanich

28 lms@melmedlaw.com

1801 Century Park East, Suite 850

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EXHIBIT C

CLASS ACTION SETTLEMENT SHARE FORM

Robert D. Wilson v. OCH Powersports, LP, dba Orange County Harley Davidson, et al.
Case Number 30-2020-01140921-CU-OE-CXC
Superior Court of California for the County of Orange

The proposed class action settlement agreement (the "Settlement") described in the accompanying *Notice of Proposed Class Action Settlement* resolves disputed claims against Defendants OCH Powersports, LP, dba Orange County Harley Davidson and OCH Management, LLC (collectively, "Defendants") arising out of their compensation practices during the period from December 16, 2017 through September 30, 2021 (the "Class Period") as applied to all individuals who are or were employed by Defendant(s) as non-exempt employees in California during the Class Period ("Class Members").

You are receiving this form because you are believed to be a Class Member. **According to Defendants' records, you worked _____ weeks for Defendants during the Class Period. Accordingly, your share of the Class Settlement is currently estimated to be \$_____,** which is an estimate of your allocated portion the Net Settlement Amount, as that term is defined in the accompanying *Notice of Proposed Class Action Settlement*. Your estimated share of the Class Settlement may increase depending on factors such as, but not limited to, the number of Class Members who effectively exclude themselves from the Settlement. **Further, according to Defendants' records, you worked _____ bi-weekly pay periods for Defendants during the PAGA Period (March 17, 2019, through September 30, 2021). Accordingly, your share of the PAGA Settlement is currently estimated to be \$_____.**

You do not need to do anything to receive money under the Settlement.

If you believe the information provided above as to the number of your work weeks and bi-weekly pay periods is incorrect and wish to dispute it, please contact the Settlement Administrator by mail or by fax no later than **[Response Deadline]** at:

ILYM Group, Inc.
claims@ilymgrouppclassaction.com
Phone: (888) 250-6810
Fax: (888) 845-6185
14751 Plaza Drive, Suite J
Tustin, California 92780

If you dispute the information stated above, the information Defendants provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation, must be postmarked or faxed no later than **[Response Deadline]**.

Do not send originals; documentation sent to the claims administrator will not be returned or preserved.

EXHIBIT D

REQUEST FOR EXCLUSION FORM
(Wilson v OCH Powersports, LP, Case No. 30-2020-01140921-CU-OE-CXC)

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION
SETTLEMENT AND RECEIVE A SETTLEMENT PAYMENT, DO NOT
FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE CLASS
SETTLEMENT, AND DO NOT WANT TO RECEIVE A CLASS SETTLEMENT
PAYMENT, YOU MUST COMPLETE, DATE AND SIGN THIS
FORM AND MAIL IT BACK TO THE ADDRESS BELOW,
POSTMARKED NO LATER THAN [response deadline]:**

Wilson v OCH Powersports, LP
c/o Settlement Administrator
[settlement administrator address]

If you submit this Request for Exclusion Form, you will not receive an individual settlement payment, and you will not be bound by the Class Release set forth in the Settlement Agreement, if the Court grants final approval to the class action settlement. You will be excluded from the Class Settlement, and will not be a Class Member in this case. You **should not** submit a Request for Exclusion and an Objection. If you do, then the Request for Exclusion will govern and the Objection will be deemed invalid.

If you are a PAGA Settlement Class member, you will receive your portion of the PAGA Payment even if you elect to exclude yourself from the class action settlement. **You will still be bound by the PAGA Release if you request exclusion from the class action settlement.** The PAGA Settlement Class members are those members of the Class who worked for Defendant in the period from March 17, 2019 through *(insert prelim approval date)*.

I have received notice of the proposed settlement in this class action lawsuit, and I wish to be excluded from the settlement in the class action lawsuit. I understand by requesting exclusion from the settlement I will not receive any money from the settlement of the lawsuit, but I will retain whatever rights I may have, if any, to pursue a claim against the Defendant with respect to the claims raised in the above-referenced lawsuit.

Your Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number, Including Area Code: _____

Last four digits of Social Security Number: XXX-XX-_____

Date: _____

(signature)