

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made and entered into as of October 26, 2020 by and between JOHN MAGANA ("MAGANA" or "Plaintiff") on one part, and MIKEY'S TRANSPORT, LLC ("MIKEY'S") and MIGUEL RODRIGUEZ ("RODRIGUEZ") (collectively "DEFENDANTS"), on the other part (collectively "the Parties"), with reference to the following facts:

A. MAGANA was employed by MIKEY'S.

B. MAGANA contends that he was not properly compensated for all hours worked, including overtime payments, that he was not properly provided meal and rest periods, that he was not provided accurate wage statements, and that he was not fully paid all wages due at the end of his employment, among other wage and hour claims.

C. MAGANA further contends that during his employment with MIKEY'S, he was subjected to acts of fraud and/or deceit and unfair competition on behalf of MIKEY'S.

D. MAGANA and DEFENDANTS have, in the interest of resolving the dispute and issues raised by the First Amended Complaint filed by MAGANA on July 17, 2020 pending in Superior Court of the State of California, County of San Francisco (Case No.: CGC-20-585117) alleging damages under the Private Attorneys' General Act (PAGA) among other employment related claims, agreed to settle this matter. MIKEY'S entered into this Agreement without acknowledging any wrongful conduct or liability on its part, and in act, does deny the same.

NOW, THEREFORE, on the basis of the foregoing facts and in consideration of the mutual covenants and agreements of the Parties hereinafter set forth, the Parties hereby covenant and agree as follows:

1. AGREEMENT OF SETTLEMENT

1.1 Subject to the terms and conditions set forth herein, for the valuable consideration specified herein, the Parties hereto hereby covenant and agree to, and shall, compromise and settle all of their respective rights, claims, obligations and liabilities *inter se*, including without limitation, all of their respective rights, claims, obligations and liabilities with respect to the facts described above.

1.2 For the sole and express purpose of securing the payments set forth below, MAGANA agrees to a settlement of NINETY-NINE THOUSAND AND SIX-HUNDRED DOLLARS (\$99,600.00) payable as follows:

(a) Within thirty (30) days of court approval of this settlement agreement and PAGA, DEFENDANTS will remit \$25,000 payable to "Hillier Law Client Trust Account FBO John Magana" ("the Firm"). This sum will be designated as settlement of any and all individual wage and hour

claims, inclusive of MAGANA'S individual penalties. The Firm shall provide DEFENDANTS with a current Form W-9 as a condition of this Agreement.

(b) Beginning within thirty (30) days of the first payment made pursuant to Section 1.2, subdivision (a) above, DEFENDANTS will remit payments totaling \$67,100 payable to the Firm in six (6) equal, consecutive thirty (30) day installments of \$11,183. This sum will be designated as settlement of any and all non-wage and hour claims, inclusive of MAGANA's individual penalties.

(c) Within thirty (30) days of court approval of this settlement agreement, DEFENDANTS will remit payment of \$5,625 payable as PAGA penalties directly to the California Labor and Workforce Development Agency ("LWDA"), subject to court approval. An additional \$1,875 will be distributed to any and all aggrieved employees, subject to review and administration by MIKEY'S.

THE TOTAL PAGA PAYMENT UNDER THIS AGREEMENT SHALL NOT EXCEED \$7,500.

Should the Court refuse to approve the PAGA Settlement as set forth herein, the Parties shall request leave and work jointly to attempt to remedy any issues raised by the court in order to obtain the Court's approval. MAGANA agrees that he is not entitled to any "enhancement" or further payment from this sum.

(d) The portions of the settlement payment identified in Section 1.2(b) and (c) hereinabove will not be subject to all federal and/or state withholdings and deductions, rather shall be classified as payment for emotional distress, statutory penalties, and/or attorneys' fees and costs. DEFENDANTS make no representations or warranties concerning the tax status of the payments referenced hereinabove beyond providing the Firm with an IRS 1099 at the end of the calendar year in which any settlement payment under this Agreement is made. Any characterization for tax purposes of such payment thereafter is solely the responsibility of MAGANA.

(e) Furthermore, MAGANA agrees that, to the extent that the payment set forth in Paragraph 1.2(b) hereinabove, or any part thereof, is construed by a federal, state or local taxing authority as wage payments for which applicable employment taxes and withholdings should have been withheld by DEFENDANTS, MAGANA shall indemnify, defend and hold DEFENDANTS harmless from any claims, demands, penalties, interest, deficiencies, levies, assessments, executions, judgments or recoveries under any federal, state or local tax laws, and any costs, attorney's fees, expenses, damages, or other amounts incurred which are associated therewith, which are in any way related to or arise from any such actual or potential tax obligations imposed by law, and/or any share of any such tax, and/or any withholding or contribution obligations, including but not limited to FICA, state unemployment insurance, state disability insurance contributions, and the like. In the event that any governmental entity makes any inquiry regarding this Agreement, the party receiving such inquiry shall immediately notify in writing the other party of such inquiry.

1.3 The Parties and their respective counsel of record agree that the terms of this settlement agreement among them is and will be confidential, except to the extent that court approval is required. The Parties agree that in response to any inquiry, each Party shall state only that "*the dispute*

has been resolved” and decline to provide the terms of the settlement, and that the Parties will not provide a copy of the settlement, or any description of its terms, to anyone except in compliance with a court order or as required pursuant to any pending judicial proceeding to which a Party may be a party, or to accountants, attorneys, certified financial planners or other individuals or entities to whom disclosure is necessary to obtain professional tax or financial planning advice or otherwise to satisfy or assist in satisfying the performance obligations of this Agreement. Any such individual or entity to whom such a disclosure is made must be advised that the information is confidential and cannot be disclosed to any other individual or entity. The Parties further agree that the breach of the confidentiality provision will be considered a material breach of this Agreement and that such will give the non-breaching party the right to obtain liquidated damages pursuant to paragraph 1.6 below.

1.4 Claimant represents that prior to signing this Agreement, Claimant has not disclosed or provided copies of any confidential information belonging to DEFENDANTS' to any third party, including but not limited to member and or donor lists, or other information protected by any agreement or policy previously executed or agreed to by Claimant in her role as an employee of Defendant. Except as required or permitted by law, Claimant agrees to keep strictly confidential and not use for personal benefit or disclose to any third party any confidential or proprietary business or financial information or trade secrets of Defendant, the use or disclosure of which may be contrary to Defendant' interests.

1.5 The Parties shall not (and shall not permit any of their respective agents to), directly or indirectly, disparage, denigrate or make any inaccurate, untruthful or incorrect statement about (whether verbally, in writing, electronically, through social media, or through any other means of communication) the other party or any of their respective officers, directors, shareholders, managers, members, partners, employees, agents or business affiliates. For purposes of this paragraph, a disparaging statement includes, without limitation, any communication which, if publicized to another, would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, good character or product quality of the person or entity to whom the communication relates. The Parties further agree that the breach of the mutual non-disparagement provision will be considered a material breach of this Agreement and that such will give the non-breaching party the right to obtain liquidated damages pursuant to paragraph 1.6 below.

1.6 The Parties agree that damages resulting from the breach of paragraphs 1.3 and/or 1.5 would be difficult to ascertain and agree to liquidated damages. In the event of any breach of 1.3 and/or 1.5 by any party, the party seeking to recover for the breach shall have the right to recover liquidated damages in the amount of TEN THOUSAND DOLLARS (\$10,000.00) per incident, plus all attorneys' fees and costs incurred in seeking to enforce the terms of this paragraph and recover said liquidated damages.

1.7 The Parties agree to mutually release each other as set forth below.

2. RELEASE OF CLAIMS

2.1 Except for the right to enforce this Agreement, MAGANA and DEFENDANTS, as

well each of their agents, servants, employees, dependents, heirs, executors, administrators, assigns, and successors, past and present, and each of them, do hereby irrevocably and forever release and discharge, waive, relinquish, quitclaim, settle, and forgive all rights, interests, claims, demands, causes of action, or choses in action of whatever kind or nature, whether absolute, contingent, known, unknown, suspected or otherwise, and whether now existing or arising in the future, which they may now or hereafter have against each other, or any of their affiliated or related business entities, and their officers, directors, franchisees, shareholder, employees, agents, servants, representatives, attorneys, insurers, owners, assigns, and successors, past and present, directly or indirectly arising out of or otherwise relating to the facts, set forth above, and any other acts, omissions, or events occurring on or before the date of this Agreement.

Further, without limiting the general scope of this Release, MAGANA acknowledges that it is his intention to release the DEFENDANTS, as well as their affiliated and related business entities, predecessors-in-interest, successors-in-interest, officers, directors, shareholders, employees, agents, servants, representatives, attorneys, insurers, owners, assigns, and successors, past and present, directly or indirectly arising out of or otherwise relating to his claims, and to waive any and all claims against them, including, but not limited to, potential claims that MAGANA may now have or that may hereafter accrue for: wrongful termination; work-related injury or illness; breach of any claimed employment contracts with MIKEY'S, including, but not limited to, breach of the implied covenant of good faith and fair dealing and any and all other express and implied provisions of such contract; for any and all violations of: the Civil Rights Act of 1964; the Equal Pay Act; the Employee Retirement Income and Security Act (ERISA); the Fair Labor Standards Act; the Immigration Reform and Control Act of 1986; the Americans With Disabilities Act of 1990; the Age Discrimination in Employment Act (ADEA); the Genetic Information Non-Discrimination Act of 2008 (GINA); all other federal civil rights laws; the California Fair Employment and Housing Act; the California Labor Code; and any and all other provisions of the statutory and common law of the State of California, all other states in the United States of America, the United States of America, and all other countries of the world, that in any manner whatsoever apply to, affected or regulated the employment of MAGANA, or the ending of that employment.

2.2 In providing the release described in Paragraph 2.1, the Parties hereby expressly acknowledge that the release is a general release that applies to all claims for injuries, damages or losses to person and property, real or personal (whether those injuries, damages or losses are known or unknown, foreseen or unforeseen) and irrevocably waives the provisions of and all of the rights and benefits conferred by Section 1542 of the Civil Code of the State of California, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

The Parties understand and acknowledge the significance and consequence of such specific waiver of Section 1542 and they hereby assume full responsibility for any injuries, damages, losses, or liability that may hereafter incur from the above-specified dispute.

2.3 Notwithstanding the terms set forth in Paragraphs 2.1 and 2.2 and/or any other term of this Agreement, the Parties hereby expressly acknowledge that the releases in this Agreement shall not

affect, alter, destroy, remove, waive, reduce, or otherwise diminish DEFENDANTS' responsibility, if any, to defend and indemnify MAGANA for alleged legal violations arising out of MAGANA's actions in the course and scope of his employment with DEFENDANTS, including, but not limited to, a June 2018 vehicle collision involving MAGANA and Johan Uriel Gavieres.

3. CERTAIN REPRESENTATIONS AND WARRANTIES

3.1 The DEFENDANTS hereby make the following representations and warranties to MAGANA, each of which is material, is being relied upon by MAGANA and is true as of the date hereof:

(a) This Agreement has been duly and validly executed and delivered by the DEFENDANTS, and no further action of any kind or nature will be or is necessary on the part of any other person whomsoever, to make this Agreement valid, binding and enforceable upon the DEFENDANTS in accordance with the terms hereof; and this Agreement constitutes a legal, valid and binding obligation of the DEFENDANTS, enforceable in accordance with the terms hereof.

3.2 MAGANA hereby makes the following representations and warranties to the Defendant, each of which is material and is being relied on by the DEFENDANTS and is true as of the date hereof:

(a) This Agreement has been duly and validly executed and delivered by MAGANA, and no further action of any kind or nature will be or is necessary on the part of any other person whomsoever, to make this Agreement valid, binding and enforceable upon MAGANA in accordance with the terms hereof; and this Agreement constitutes a legal, valid and binding obligation of MAGANA, enforceable in accordance with the terms hereof;

(b) MAGANA is the sole and lawful owner of all rights, title and interest in and to all claims, demands, causes of action, choses in action, rights and interests covered by the provisions of Paragraph 2 hereof, and MAGANA has not heretofore sold, assigned, transferred, hypothecated, or otherwise disposed of any interest in any such claim, demand, cause of action, chose in action, right and/or interest.

4. ENFORCEABILITY AND BINDING AND CONCLUSIVE EFFECT

4.1 It is the mutual intent of all Parties hereto that this Agreement is, and shall be, final, conclusive, binding, enforceable and non-terminable as of, and from and after the date of execution hereof notwithstanding, and regardless of: (i) any change in the law (statutory, judicial, or otherwise) at any time after the date hereof; and/or (ii) except as set forth in Paragraphs 3.1 and 3.2, whether any of the facts with respect to, or otherwise on the basis of, upon which any of the Parties hereto has entered into and/or executed this Agreement is at any time after the date hereof found or proven to be different in any manner whatsoever from the facts now believed by any of the Parties to be true as of the date hereof; and/or (iii) except as set forth in Paragraphs 3.1 and 3.2, the discovery of the existence of any additional claims based upon facts existing as of the date of this Agreement which any of the Parties hereto may have against any of the other Parties hereto.

4.2 Without limiting the generality of any of the provisions hereof, including, without limitation, the provisions of Paragraphs 2.1, 2.2, 3.1, and 3.2 hereof, and in furtherance thereof, each of the Parties hereto hereby recognizes, acknowledges, and agrees as follows:

(a) Each of the Parties has retained an attorney and has had the opportunity to review with such attorney the meaning, significance, and legal effect of each provision of this Agreement in its entirety;

(b) Each of the Parties has had adequate opportunity to make, and has made whatever investigation or inquiry that it has deemed necessary or desirable in connection with the subject matter of this Agreement prior to the execution and delivery hereof;

(c) None of the Parties has been induced to enter into or execute this Agreement on the basis of any statement, covenant, agreement, promise, representation, or warranty of any of the other Parties hereto not otherwise expressly set forth herein;

(d) If any fact with respect to, or otherwise on the basis of, which each of the Parties has entered into and executed this Agreement, is at any time hereafter found or proven to be other than, or different from, the facts now believed by each of the Parties to be true, each of the Parties nevertheless hereby expressly accepts and assumes the risk of such possible difference in facts and further covenants and agrees that this Agreement shall be and remain effective, binding and non-terminable, notwithstanding any such difference in facts;

(e) This Agreement, and the settlement covered and contemplated hereby, is intended by each of the Parties to be and shall be final, binding, and conclusive thereon pursuant to a full and final accord and satisfaction between all of the Parties hereto and is intended to, and shall, constitute a bar to each and every claim, demand and cause of action covered by Paragraphs 2.1, and 2.2 hereof, notwithstanding, and regardless of, any claims of fraud, misrepresentation, concealment of fact, mistake of, or change in, law or fact, or any other circumstance whatsoever including, without limitation, the discovery as of the date hereof of the existence of any additional claims which the Parties may have against each other specified herein;

(f) It is the intention of the Parties that this Agreement shall be given full force and effect in accordance with each and all of the terms and provisions hereof, with respect to all claims, demands and causes of action which are subject to the provisions of Paragraphs 2.1, and 2.2 hereof, including, without limitation, all unknown or unsuspected claims, demands and causes of action, if any;

(g) This Agreement is intended to, and shall, effect a full, complete and final settlement of all of the Parties' claims, present and possible, each and all of which claims are denied and contested by the other party, and nothing contained herein shall be deemed or construed in any manner whatsoever as an admission by Defendant of any liability of any kind or nature to Plaintiffs, or vice versa, with respect to all or any such claims; and

(h) It is the intention of the Parties that this settlement is binding and enforceable in accordance with California Evidence Code Sections 1115-1128.

5. ACKNOWLEDGEMENTS AND AFFIRMATIONS

5.1 MAGANA affirms that he has not filed, or caused to be filed, any claim, complaint, or action against the Defendant in any forum or form other than the present action and that MAGANA is presently not a party to any claim, complaint, or action against the DEFENDANTS in any forum or form other than the present action.

5.2 MAGANA affirms that he has reported all hours worked as of the date MAGANA signs this Agreement and timely has been paid or has received all compensation, bonuses, commissions, and benefits which are due and payable as of the date of execution of this Agreement, except as alleged in this action.

5.3 MAGANA affirms that he has no known workplace injuries or occupational diseases and that he has been granted or has not been denied any leave to which he was entitled under the Family and Medical Leave Act, the California Family Rights Act, or disability accommodation laws.

5.4 MAGANA affirms that he has not been retaliated against for reporting any allegations of wrongdoing by MIKEY'S, or any of its officers, directors, or employees, including, but not limited to, allegations of corporate fraud, except as alleged in this action.

5.5 MAGANA affirms that as of the date he signs this Agreement, he is not Medicare eligible (*i.e.*, is not 65 years of age or older; is not suffering from end-stage renal failure; has not received Social Security Disability Insurance benefits for 24 months or longer, etc.). Nonetheless, if the Center for Medicare & Medicaid Services ("CMS"), or any related agency representing Medicare's interests, determines that Medicare has an interest in the settlement payments to MAGANA under this Agreement, MAGANA agrees to indemnify, defend, and hold harmless the Defendant from any action by CMS relating to medical expenses of MAGANA. MAGANA agrees to reasonably cooperate with the DEFENDANTS upon request with respect to any information needed to satisfy the reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if applicable, and any claim the CMS may make and for which MAGANA are required to indemnify the DEFENDANTS under this section. Further, MAGANA agrees to waive any and all future actions against the DEFENDANTS for any private cause of action for damages pursuant to 42 U.S.C. §1395y(b)(3)(A).

6. FURTHER ASSURANCES.

6.1 Each of the Parties hereto hereby covenants and agrees to do such acts and things, and in connection therewith, to execute and deliver such documents and instruments as reasonably may be required for effecting and otherwise carrying out the purposes of the settlement covered and contemplated hereby.

7. GENERAL.

7.1 In the event that any provision of this Agreement is unenforceable, such shall not affect the validity of any other provision of this Agreement.

7.2 Except as otherwise expressly provided for herein, each of the Parties hereto shall

pay its own costs, expenses, and attorney fees in connection with the claims and disputes which are herein settled, and the settlement covered and contemplated hereby, including, without limitation, all costs and expenses incurred in connection with the performance of all of his or its, covenants, agreements, duties, and obligations hereunder.

7.3 No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute, or otherwise, and except as otherwise expressly provided for herein, each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law, in equity, by statute, or otherwise. The election of any one or more of such remedies by any of the Parties hereto shall not constitute a waiver by the Parties of the right to pursue any other available remedies.

7.4 All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if and when delivered in person or by any means whereby a signature confirming delivery is obtained:

- a. If on MIKEY'S and/or RODRIGUEZ:
Brian E. Koegle, Esq.
POOLE SHAFFERY & KOEGLE, LLP
25350 Magic Mountain Parkway, Second Floor
Santa Clarita, CA 91355
- b. If on MAGANA:
Andrew Hillier, Esq.
HILLIER LAW
600 W. Broadway, Suite 700
San Diego, CA 92101

or to such other persons or addresses as the Parties may furnish to each other from time to time. Any such notice, demand or other communication made pursuant to the provisions of this Paragraph 7.4 shall be deemed to have been given on the date actually delivered to the addressee to whom it is directed.

7.5 None of Parties hereto may assign any of its rights, or delegate any of its duties hereunder without the prior written consent of the other Parties hereto, and any such assignment or delegation without the prior written consent of such other Parties shall be void *ab initio*, and said consent shall not be unreasonably withheld.

7.6 All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective transferees, successors, and permitted assigns.

7.7 This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. Facsimile signatures or photocopied signatures will be deemed as if original.

7.8 This Agreement is made and entered into in the State of California and the laws of said state shall govern the validity and interpretation hereof, and the performance of the Parties hereto of

their respective duties and obligations hereunder.

7.9 Paragraphs or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; and, no provision of this Agreement shall be interpreted for or against any of the Parties because one or more of the Parties or its or their legal representative drafted the provision.

7.10 No breach of any provision hereof may be waived unless in writing and the waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

7.11 This Agreement may be amended only by a written agreement executed by all of the Parties hereto.

7.12 All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural as the identity of the person may require.

7.13 Should one of the Parties hereto retain counsel for the purpose of enforcing, restraining, enjoining or otherwise preventing the breach of, any provision hereof, including, without limitation, the commencement or institution of any action or proceeding (including arbitration) to enforce any provision hereof, for damages by reason of any alleged breach of any provision hereof, for a declaration of one of the respective Parties' rights or obligations hereunder, or for any other judicial remedy in connection therewith, the prevailing Party(ies) shall be entitled, in addition to such other relief as may be granted in such action or proceeding, to be reimbursed by the other Party(ies,) for all costs and expenses incurred thereby, including, without limitation, the reasonable attorneys' fees and costs for services rendered to such prevailing Party(ies) in connection therewith. If there is any dispute arising under the terms and/or conditions of this agreement, including breach of this agreement, the parties agree that the venue shall be in Los Angeles County.

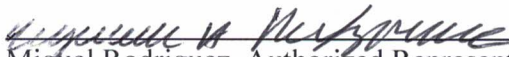
7.14 This Agreement is entered into for the express benefit of the Parties hereto, their successors and assigns, and is not intended, and shall not be deemed, to create in any other person any rights or interest whatsoever, including without limitation, any right to enforce the terms hereof.

7.15 This Agreement embodies the entire understanding of the Parties, and there are no further or other agreements or understandings, written or oral, in effect between the Parties hereto relating to the subject matter hereof, unless expressly referred to by reference herein or executed concurrently herewith.

IN WITNESS WHEREOF, the Parties hereto have entered into and executed this Agreement as of the date first above-mentioned.

By: _____
JOHN MAGANA, Plaintiff

MIKEY'S TRANSPORT, LLC

By:  _____
Miguel Rodriguez, Authorized Representative

By:  _____
MIGUEL RORIGUEZ, Defendant