

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement”) is made and entered into between **Nick Coker** (acting in a private attorney general capacity under the Private Attorneys General Act) and **Miramar Professional Services DBA Mankind Cooperative**.

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. “Action” means the matter entitled *Nick Coker v. Miramar Professional Services*, San Diego Superior Court Case No. 37-2020-00032172-CU-OE-CTL, and as set forth in Plaintiff’s correspondence to the California Labor and Workforce Development Agency (“LWDA Letter”) dated July 6, 2020.

2. “Aggrieved Employees” consist of all current and former non-exempt employees of Defendant from **July 6, 2019** until **Oct. 2, 2021**. The number of Aggrieved Employees, including Plaintiff, is estimated to be 171 individuals.

3. “Defendant” means Miramar Professional Services DBA Mankind Cooperative.

4. “Complaint” means the Representative Action Complaint entitled *Nick Coker v. Miramar Professional Services*, San Diego Superior Court Case No. 37-2020-00032172-CU-OE-CTL, filed on September 14, 2020.

5. “Court” means the Superior Court of California for the County of San Diego.

6. “Effective Date” means the date upon entry of an Order by the Court approving the Settlement.

7. “Individual PAGA Payments” means the amounts to be paid to each Aggrieved Employee based on the formula described herein.

8. “LWDA” means the California Labor and Workforce Development Agency.

9. “Maximum Settlement Amount” is the non-reversionary sum of Two-Hundred and Ten Thousand Dollars (\$210,000.00), which represents the total amount payable under this Settlement by Defendant (subject to the Escalator Clause described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, Settlement Administrator fees, and payment of Plaintiff’s attorneys’ fees and costs.

10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (if approved by the Court) are subtracted from the Maximum Settlement Amount: (a) Plaintiff’s Attorneys’ Fees and Costs and (b) Administration Costs.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from **July 6, 2019** until **Oct. 2, 2021**.

13. “PAGA Released Claims” mean any and all claims under PAGA that are pled in Plaintiff’s Complaint, or which could have been pled under the PAGA based on the factual allegations in Plaintiff’s Complaint, that arose during the PAGA Period.

14. “Parties” mean Plaintiff and Defendant.

15. “Plaintiff” means Nick Coker.

16. “Plaintiff’s Counsel” means Nicholas Ferraro and Lauren Vega of Ferraro Vega Employment Lawyers, Inc.

17. “Settlement Administrator” means Phoenix Settlement Administrators.

II. RECITALS

1. Plaintiff alleges that Defendant: failed to distribute gratuities; failed to pay overtime wages for overtime hours worked; failed to provide all meal and rest periods; issued inaccurate and facially-deficient wage statements; failed to pay all final wages to employees upon separation of employment; failed to reimburse for all business-related expenses; failed to maintain accurate payroll records; and is liable for civil penalties under PAGA.

2. On July 6, 2020, Plaintiff provided written notice to the LWDA and Defendant asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of the California Labor Code described in Section II.1.

3. On September 14, 2020, Plaintiff filed a Complaint entitled *Nick Coker v. Miramar Professional Services*, San Diego Superior Court Case No. 37-2020-00032172-CU-OE-CTL.

4. In response to Plaintiff’s Counsel’s informal discovery requests, Defendant provided Plaintiff’s Counsel with information and documents pertaining to Plaintiff and other Aggrieved Employees for Plaintiff’s Counsel to investigate Plaintiff’s allegations and value the PAGA claim.

5. On June 24, 2021, the Parties participated in a full-day mediation with Todd A. Smith, Esq. The case did not settle at mediation. However, in August 2021, with the assistance of Mr. Smith, the Parties agreed in principle to fully and finally resolve the PAGA Released Claims as to Plaintiff and the Aggrieved Employees and thereafter began preparing this long-form Settlement.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission**. Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid

further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability, except as necessary to enforce the terms of this Settlement.

2. **Funding of Maximum Settlement Amount.** Defendant shall pay \$210,000.00 as the non-reversionary Maximum Settlement Amount. Defendant will not pay more than the Maximum Settlement Amount (except as subject to the Escalator Clause below). The Maximum Settlement Amount shall be funded in three (3) equal installments of \$70,000 to the Settlement Administrator, as follows:

<u>FUNDING AND PAYMENT SCHEDULE</u>				
<u>Payment</u>	<u>Funding Date</u>	<u>Amount</u>	<u>Apportionment</u>	
First Payment	No later than 15 business days of Effective Date	\$70,000	Settlement Admin Costs of \$2,750 Individual PAGA Payments to Aggrieved Employees of \$29,028.02 LWDA Payment of \$38,221.98	
Second Payment	No later than 182 calendar days of Effective Date	\$70,000	LWDA Payment of \$20,112.10. \$40,000 as attorneys' fees \$9,887.90 as reimbursed litigation costs to Plaintiff's counsel	
Final Payment	No later than 365 calendar days of Effective Date	\$70,000	LWDA Payment of \$28,750. \$41,250 as attorneys' fees	
Totals	-	<u>\$210,000</u>	To Settlement Administrator: \$2,750 To Litigation Costs: \$9,887.90 To Attorneys' Fees: \$81,250 <u>Net Settlement Amount:</u>	

			<i>To LWDA: \$87,084.08 (75 percent of Net Settlement Amount)</i> <i>To Aggrieved Employees: \$29,028.02 (25 percent of Net Settlement Amount)</i>
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Within five (5) business days of Defendant's funding of each of the First, Second and Final Payments, respectively, to the Settlement Administrator, the Settlement Administrator shall distribute the funds to the respective person or entity according to the Apportionment column of the Funding and Payment Schedule, in accordance with the terms of this Settlement.

3. **Escalator Clause.** As stated above, Defendant represents that the number of relevant pay periods is 4,487. If the actual number of pay periods increases by ten percent (10%) or more (i.e., if there are 449 or more additional pay periods), Defendant shall increase the Maximum Settlement Amount on a proportional basis..

4. **Net Settlement Amount**

a. **Plaintiff's Attorneys' Fees and Costs.** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to \$81,250, representing Plaintiff's Attorney's lodestar, or Plaintiff's actual litigation costs in the amount of up to \$9,887.90. In the event the Court approves a payment of less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). The Settlement Administrator will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

b. **Administration Costs.** Defendant will not oppose the Settlement Administrator's costs in the amount up to \$2,750 for administering the Settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount.

5. **Allocation of Net Settlement Amount.** The Net Settlement Amount shall be designated as "2699 Civil Penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

6. **Representative PAGA Release.** In his capacity as a private attorney general or "aggrieved employee" acting on behalf of himself, the State of California and Aggrieved Employees, Plaintiff hereby releases Defendant and its respective heirs, executors, administrators, successors, assignees, parents, subsidiaries and related entities, officers, directors, shareholders, employees, agents, servants, representatives, members, attorneys, insurers, re-insurers, assigns, and affiliates, and any and all other entities with whom they have been, are now, or may hereafter

be affiliated, and any of their affiliated companies, predecessors, successors and assigns, as well as their past or present officers, directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees (including but not limited to Wild West Industries, Inc.) (collectively “Releasees”) from any and all of the PAGA Released Claims that arose during the PAGA Period.

7. **PAGA Released Claims.** Plaintiff agrees that upon entry of an Order approving the Settlement, all Aggrieved Employees will release any and all PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon entry of the Order approving the Settlement and judgment entered thereon, Plaintiff and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

8. **Covenants and Representations by Plaintiff and Plaintiff’s Counsel.**

a. Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.

b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of this Settlement and the consequences of signing this Settlement.

9. **Non-Publicity.** Neither Plaintiff nor Plaintiff’s Counsel shall issue a press release, hold a press conference, publish information about the Settlement on any website (except as necessary to effectuate the terms of this Settlement) or through any social media or otherwise publicize the Settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiff’s Counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the PAGA Payment, as required by Labor Code § 2698, *et seq.*, Plaintiff’s Counsel will file the Settlement with the Court and submit the Settlement to the LWDA as part of the Parties’ seeking Court approval of the Settlement, per Lab. Code § 2699(1)(2).

10. **Termination of Settlement.** If the Court does not approve the Settlement, if the Court does not enter judgment, as provided for in this Settlement, or if appellate review is sought and, on such review, the Court’s decision is materially modified or reversed, or if one or more of the terms of the Settlement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within ten (10) calendar days of written notice thereof to elect to terminate the Settlement, in which case the Settlement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement.

11. **Judgment.** As part of the motion or stipulation to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement and retains jurisdiction over the Action for the purpose of

enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiff and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to use Phoenix Settlement Administrators to handle the administration of this Settlement.

2. **Provision of Information for Aggrieved Employees.** Within *ten (10) business days* after the Effective Date, Defendant shall provide the Settlement Administrator with information for the Aggrieved Employees. Defendant will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, start date(s) of employment, end date(s) of employment, total pay periods worked, and Social Security numbers. The list shall also include the sum total of all pay periods worked by Aggrieved Employees during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement.

Within *fifteen (15) business days* of the Effective Date, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall also determine whether the Escalator Clause has been triggered. The Settlement Administrator shall obtain approval from all counsel for the Parties of the calculations before mailing Individual PAGA Payments.

If the Escalator Clause has been triggered, Defendant shall make any additional payments within five (5) business days.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses.

Within five (5) business days after obtaining approval from all counsel to proceed with the mailing, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with the Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099. Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be transferred to the Controller of the State of California per California's Unclaimed Property Law to be held in the name of the Aggrieved Employee

4. **Undeliverable Notices.** Any Explanatory Letters returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a single "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Explanatory Letter. If an updated mailing address is identified, the Settlement Administrator shall resend the Explanatory Letter to the Aggrieved Employee immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee. Aggrieved Employees to whom Explanatory Letters are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Individual PAGA Payment. Explanatory Letters that are re-mailed shall inform the recipient of this adjusted deadline.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual PAGA Payment through the Settlement Administrator's initial mailing of a check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

5. **Payment of Settlement.** Within five (5) business days of Defendant's funding of each of the First, Second and Final Payments, respectively, to the Settlement Administrator, the Settlement Administrator shall distribute the funds to the respective person or entity according to the Apportionment column of the Funding and Payment Schedule, in accordance with the terms of this Settlement.

6. **Accounting.** The Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement as soon as practicable after the check cashing deadline described in Section IV.3. The accounting declaration shall be provided only upon request of either Party.

7. **Tax Consequences.** Individual PAGA Payments made under this Settlement will be attributed 100% as penalties and interest and paid via IRS Form 1099 to each Aggrieved Employee. Neither Plaintiff nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. MISCELLANEOUS PROVISIONS

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Plaintiff nor Defendant shall be considered the "drafter" of this Settlement for purposes of having terms construed against that Party.

2. **Successors and Assigns.** This Settlement shall be binding upon and inure to the benefit and obligation of the Parties hereto and their respective heirs, trustees, executors, administrators and successors, and assigns.

3. **Costs and Fees.** The Parties shall each bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as specifically set forth in Section V.15.

4. **Governing Law.** This Settlement shall be construed under and governed by the laws of the State of California. All questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement has been made to them and acknowledge and represent that this Settlement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA Released Claims. This Settlement cannot be amended or modified except by a writing signed by the Parties hereto.

6. **Nullification of Settlement.** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

7. **Judgment and Continued Jurisdiction.** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement.

8. **Amendment or Modification.** This Settlement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

9. **Authorization to Enter into Settlement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

10. **Execution and Counterparts.** This Settlement is subject only to the execution of all Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

11. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further

acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

12. **Invalidity of Any Provision.** Before declaring any provision of this Settlement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement valid and enforceable.

13. **Severability.** If any term or provision of this Settlement is held to be invalid or unenforceable, the remaining portions of this Settlement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

14. **Waiver.** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

15. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties all reasonable attorneys' fees and costs, including expert witness fees, incurred in connection with any enforcement actions. The prevailing party shall also be entitled to recover all pre- and post-judgment interest for breach of this agreement, along with all other recoverable sums. The rights and obligations of this Settlement may be enforced by or against Plaintiff or one or more of the Releasees.

16. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

17. **Representation by Counsel.** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

18. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement.

19. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and Releasees and agree that it will be admissible and subject

to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

20. **Denial of Liability.** The Parties expressly recognize that the making of this Settlement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement may be used in any Court proceeding that has as its purpose the interpretation, implementation or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

21. **Continuing Jurisdiction.** The Court shall retain jurisdiction over the implementation of this Settlement as well as any and all matters arising out of, or related to, the implementation of this Settlement.

IN WITNESS THEREOF, the Parties each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

Dated: Oct 21, 2021, 2021

PLAINTIFF

By: Nicholas M Coker
Nick Coker

MIRAMAR PROFESSIONAL SERVICES

Dated: 10/20/2021, 2021

DocuSigned by:
Margot Micallef
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By: Margot Micallef
Its: Chair and CEO

EXHIBIT A